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EXPORT CONTROL REFORM: THE AGENDA AHEAD

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HOUSE OF REPRESENTATIVES

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EXPORT CONTROL REFORM: THE AGENDA AHEAD

WEDNESDAY, APRIL 24, 2013

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:10 a.m., in room 2172 Rayburn House Office Building, Hon. Edward Royce (chairman of the committee) presiding.

Chairman ROYCE. This Export Control Reform hearing will come to order. Today we meet to discuss the agenda for advancing U.S. export control reform. The U.S. has long had in place a system of strategic export controls. These controls restrict the commercial export of both arms and dual-use items—that is, items that have both a civilian and military application—in order to advance our national security, our foreign policy, and of course our economic interests around the globe.

The main goal of our export controls is to restrict the flow of sensitive technology to terrorists and state sponsors of terrorism, or other countries that may be hostile to the United States. Under this system, the State Department is responsible for regulating arms exports while the Commerce Department is responsible for regulating exports of dual-use items. The Department of Defense identifies and helps protect military critical technologies, including by providing technological expertise. Several agencies, including the Department of Justice and the Department of Homeland Security, are responsible for export enforcement.

This committee has jurisdiction over all aspects of U.S. strategic export controls, and for many years this system has been regarded as the gold standard of national export control regimes. But over time, the GAO and many others have observed that the complexities of the system have begun to erode its own effectiveness. In particular, the nature of our controls became out of step with changes in defense acquisition policy, global manufacturing trends, and technological development. The world economy left our bureaucracy behind.

As we will hear today, the administration has begun a comprehensive restructuring of the U.S. export control system. The goal of that reform effort is to better tailor U.S. export controls to our national security interests. These interests include helping our industries shed needless bureaucracy and compete in the global marketplace and strengthening our economy.

Indeed, this reform will affect a broad swath of American business, including the defense industry, aerospace, the commercial satellite and space industry, electronics, semiconductors, and communications technology. The goal is a more transparent and a more efficient system.

However, some caveats are in order. The primary beneficiaries of the current reforms are expected to be small and medium sized industries, but they and others initially may struggle to adapt to the intricacies of a new regulatory regime. Likewise, it is uncertain whether executive branch agencies themselves are fully prepared for these changes, both with respect to licensing and enforcement functions.

Effective outreach to business will be critical. Missteps in implementation are inevitable. The committee will be watching and lend a hand when we can.

Meanwhile, there is a large reform agenda still ahead. More effort should be placed on enhancing licensed defense trade with friends and allies. Implementation of multilateral regime changes should be accelerated. The increasingly elaborate Export Administration Regulations need to be simplified. Some of these goals can be accomplished by the executive branch, but Congress also has an important role to play here. And in this regard, I look forward to working with the ranking member on bipartisan legislation to advance common sense reforms.

As with the historic reforms of U.S. satellite controls that passed Congress last year, we hope to cooperate closely on these matters with the executive branch. Here, I would suggest it is long past due to reassess the status of the lapsed Export Administration Act. Let us ensure that we are guarding against those enemies that are determined to hurt us with our own technology.

And I turn now to the ranking member for his opening statement.

Mr. Sherman?

Mr. SHERMAN. Mr. Chairman, it is like old times. For 6 years we were the ranking member and chair of the Terrorism, Nonproliferation, and Trade Subcommittee. We held five hearings on this issue. And I want to commend you for bringing this issue early in your first year as chair of this committee to the full committee. We have got two statutory regimes—arms sales regulated by the State Department which creates the Munitions List, dual-use items regulated by the Department of Commerce which both by the nature of the items it regulates and its own proclivities is somewhat less stringent.

In late 2006, the State Department had a backlog of 10,000 license applications. Waiting times went for months. Even exporting handguns to be used by police officers in the most friendly countries could take months. Delays in the adjudication are often just as bad as answering with a no, because in either case the business will go elsewhere. The effect of that is not only lost jobs in the United States, but also money flowing into the industrial base of countries that may be less stringent or even unfriendly to the United States.

Manufacturers have viewed being on the Munitions List as a great difficulty, leading to the so-called ITAR-free satellites, sat-

ellites carefully constructed so not a single part would be subject to the International Traffic in Arms Regulations of the State Department. I look forward to satellites being moved to the dual-use list with some additional restrictions.

Our subcommittee held six hearings on this. I want to commend especially the State Department for allocating additional resources and shortening the wait times. The Obama administration has announced the outlines of export control reform. Secretary Gates was right when he said we need to build a higher fence around a smaller yard, and I would add, with a faster gatekeeper.

The President's Export Reform Initiative will make a number of improvements to the system, including an enforcement coordinator to coordinate Commerce and State IT improvements to allow easier submission and processing applications, and a single electronically available list of prescribed entities ineligible for exports, which has been made available.

The focus here is to look category by category at items on the Munitions List and determine what items in that category can be transferred to a new Commerce Department Munitions List I referred to as the Series 600. And so you have a State Department list that is getting smaller, and a Commerce Department list that is getting larger. We need to reauthorize the statute for the Commerce Department. The Export Administration Act, right now it is being continued on life support under the general emergency statute, IEEPA. It is about time Congress actually craft legislation in this area rather than keeping alive ancient legislation or letting the administration do so. We need to carefully look at the export control reform, perhaps move toward a single agency rather than just coordination between two agencies.

Finally, I want to emphasize that it is not in our interest to be exporting not goods, but to export tools and dies and blueprints. The effect of that is not only that we lose jobs but that we build an arms or dual-use infrastructure elsewhere. And I think it should be an explicit part of our policy that we are not here to liberalize the rules to offshore production, even if there are powerful interests in this area that would find that the profitable thing to do.

So I look forward to hearing from our witnesses how we can make sure that the infrastructure and manufacturing infrastructure stays here in the United States and that there are not undue delays in exporting that which should be exported. I yield back.

Chairman ROYCE. Well put. We will go to our representatives now from the Departments of State, Commerce and Defense. We will start with Mr. Thomas Kelly, acting Assistant Secretary for the Bureau of Political-Military Affairs at the State Department. In his career as a Foreign Service Officer he has served in posts across the continent of Europe and South America.

Mr. Kevin Wolf serves as Assistant Secretary for Export Administration for the Bureau of Industry and Security at the Department of Commerce, and prior to this appointment he practiced law specializing in Export Administration Regulations and International Traffic in Arms Regulations.

And we have Mr. James Hursch, Director of the Defense Technology Security Administration for the Defense Department. His

career at the Department began 28 years ago. He has been awarded the Secretary of Defense Exceptional Service Award.

We are welcoming here all our witnesses to the committee, and without objection the witnesses' full prepared statements will be made part of the record. And members may have 5 days to submit statements and questions and extraneous material for the record. So I would ask that you all summarize your prepared statement, and we will start with Mr. Kelly.

STATEMENT OF MR. THOMAS KELLY, ACTING ASSISTANT SECRETARY, BUREAU OF POLITICAL–MILITARY AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. KELLY. Thank you very much, Mr. Chairman, and good morning. Thanks to you and to Congressman Sherman for your remarks.

Chairman Royce, Congressman Sherman, committee members, it has been 2 years since the committee last met to hear testimony on the President's Export Control Reform Initiative. A lot of work has been done in the intervening period. I would like to start by thanking the committee on behalf of the State Department for its bipartisan support throughout this process.

As the pace of technological advance accelerates and as technological capability spreads around the world, the need to update our export controls is increasingly urgent. We are no longer in an era in which a handful of countries hold the keys to the most sensitive technologies, as was the case during the Cold War. Today a whole range of nations have advanced technological capability. At the same time, because of the diffusion of technology many U.S. companies must collaborate with foreign partners to develop, produce and sustain leading edge military hardware and technology. And their survival depends on it.

But because our current export controls are confusing, time consuming, and many would say overreaching, our allies increasingly seek to design out U.S. parts and services thus avoiding our export controls, and use monitoring that comes with them, in favor of indigenous design. This threatens the viability of our defense industrial base especially in these austere times.

Our current system has another problem. It can prevent our allies in theater from getting the equipment and technology they need to fight effectively alongside our troops in the field. The system has its basis in the 1960s and hasn't undergone significant updates since the early 1990s. It is cumbersome, complex, and incorrectly controls too many items as though they were crown jewel technologies. And what that has meant is that there has been an inordinate amount of agency resources both in terms of licensing and compliance activities that have been expended on nuts and bolts as well as our real crown jewel technologies.

In November 2009, President Obama directed a White House taskforce to identify how to modernize our export control system so that it will address the current threats that we face as well as account for the technological and economic landscape of the 21st century. His direction was grounded in national security with a goal of putting up higher fences around the items that deserved the

greatest protection while permitting items of lesser sensitivity to be exported more readily when appropriate.

To address the problems the task force identified, they recommended reforms in four key areas: Licensing policies and procedures, control lists, information technology, and export enforcement. The President accepted the recommendations, and since early 2010 agencies have been working very hard to implement them. Much of the agencies' efforts have centered on revising the U.S. Munitions List and Commerce Control List. This reform will draw a bright line between the two lists using common terms and control parameters. This will help our exporters determine far more easily which list their products are on. The reform will ensure that those items of greatest concern to us from a national security and foreign policy perspective will remain on the USML and thus be subject to the most stringent licensing requirements, while items of less sensitivity will be moved to the CCL.

I want to emphasize a key point. Items moving to the CCL are going to remain controlled. They are not being de-controlled, but in specific circumstances they will be eligible for export under Commerce's more flexible licensing mechanisms. I am confident that the revised list will permit State to continue to perform its national security and foreign policy mandates in export licensing. I would also like to note that we are making tremendous progress in the effort to rewrite the categories. We published 12 rebuilt USML categories in the Federal Register for public comment. The proposed rules for the seven remaining categories have been drafted and are either undergoing or awaiting interagency review so that we can then publish them for public comment.

On April 16, the Departments of State and Commerce published companion rules that implement the revised USML categories, eight aircraft and 19 engines. This is the first pair of series of final rules that put in place the rebuilt export control lists. Our goal is to publish the revised USML in its entirety on a rolling basis throughout this year.

In the last phase of our reform effort we will need legislation to bring the initiative to its logical conclusion by creating a single licensing agency. The administration hasn't yet determined when to approach this effort, but we will fully engage our oversight committees and know we can count on your support when we do so.

On that note, one final point I want to make is that this hasn't only been an interagency process, it has been a cross-government process. Over the course of the past 3 years I have had the opportunity to work closely with the committee, with many others across the Congress on both the broad strategic questions of national security and the finer technical details of our proposals. Our work together shows what we can achieve together. I am very grateful for your bipartisan support for this initiative. I look forward to working closely with you on the remainder of the reform effort.

And with that I want to thank you for inviting me to testify, and I would like to turn the floor over to my colleague, Commerce Assistant Secretary Kevin Wolf.

[The prepared statement of Mr. Kelly follows:]

UNCLASSIFIED

Acting Assistant Secretary Kelly at the House Committee on Foreign Affairs
Hearing on Export Control Reform
2172 Rayburn House Office Building, Washington, D.C.
Wednesday April 24, 2013. 10:00 a.m.

Good morning Mr. Chairman, Ranking Member Engel, and Members of the Committee. I welcome the opportunity to speak with you today about the Administration's export control reform initiative.

The President strongly believes that we must improve the current export control system so that it strengthens U.S. national security and advances U.S. foreign policy interests. He also believes that we must create an efficient and predictable system using modern business practices and information-sharing mechanisms to help our exporters become more competitive now and in the future.

For decades, the U.S. export control system supported national security objectives by keeping our most sophisticated technologies out of the hands of Cold War adversaries with significant success. In many cases, the United States was the sole producer of those technologies and could control their export with relative ease. Where there were foreign producers of such items, the United States was able to convince their governments to similarly control sensitive technologies because of common threats.

Today, we no longer face a monolithic adversary like the Soviet Union. Instead, we face terrorists seeking to build weapons of mass destruction, states striving to improve their missile capabilities, and illicit front-companies seeking items to support such activities.

In addition, the United States is no longer the sole source of key items and technologies. Today, cutting edge technologies are developed far more rapidly than forty or fifty years ago, in places far beyond our borders. Many U.S. companies must collaborate with foreign companies to develop, produce, and sustain leading-edge military hardware and technology if they are to survive as viable businesses.

Our export control system has not kept pace with these changes. I will mention a few examples that illustrate the problem. As of 2009, the U.S. Munitions List, administered by the Department of State, and the dual-use control list administered by the Department of Commerce had not been comprehensively updated since the early 1990s in the first Bush Administration. Our munitions licensing policies

required individual licensing for most countries for items on the U.S. Munitions List. For example, not only the F-16 aircraft, but nuts and bolts in the F-16, and conversations between the exporter and the end-user about how to use them, required individual licenses. Our system required us to spend as much time on proposed exports to our closest allies as we spend on proposed exports to the rest of the world, and as much time on our "crown jewel" technologies as on the nuts and bolts of those technologies.

By 2009, our munitions licensing system was processing over 80,000 license applications per year. The military forces of our allies faced unpredictable and, in some cases, quite lengthy delays in their efforts to obtain U.S. defense articles so that they could work efficiently alongside U.S. forces in theatres of conflict. U.S. exporters have seen growing efforts by foreign competitors to replace or remove U.S. defense articles from their products. By doing so, foreign companies do not have to deal with the U.S. munitions licensing system, or obtain U.S. permission if they want to reexport a product containing any U.S. defense article – even something as small as a bolt. The "ITAR-free" trend also helped create and sustain foreign competitors at the prime and sub-prime levels.

In August 2009, President Obama directed a White House task force to examine how to modernize our export control system to better address current threats, and to navigate the rapidly changing technological and economic landscape of the 21st century. The task force included representatives from the Departments of State, Defense, Commerce, Energy, Treasury, Justice, Homeland Security, and the Office of the Director of National Intelligence.

The task force completed its initial review of our export control system in early 2010 and found numerous deficiencies. In addition to the problems I mentioned previously, agencies had no unified computer system that permitted them to communicate effectively with each other, let alone with U.S. exporters. Exporters faced numerous paperwork requirements. Licensing requirements were confusing, which delayed U.S. exporters and made them less competitive in overseas markets. The task force found that this confusion helps those who might evade our controls. The task force noted instances of enforcement actions that were ineffective and wasteful, mostly due to poor communication among the various export enforcement entities.

To address these deficiencies, in early 2010 the task force put forward recommended reforms in four key areas: licensing policies and procedures; control lists; information technology; and export enforcement.

The President accepted these recommendations and directed agencies to implement them as mapped out in a three-phase implementation plan. In the first phase, we made core decisions on how to rebuild our lists, recalibrate and harmonize our definitions and regulations, update licensing procedures, create an Export Enforcement Coordination Center, and build a consolidated licensing database.

Agencies are currently engaged in the second phase of work, which is the implementation of all of those decisions. State, Commerce, and Treasury will adopt the Department of Defense's secure export licensing database – called "USXports" – as the initial step to creating a government-wide computer system dedicated to supporting the export control process. I am pleased to report that the Department of State shortly will implement the new system for munitions licensing.

Much of our effort has centered on revising the U.S. Munitions List and the Commerce Control List. In essence, this part of the reform will ensure that those items of greatest concern from a military perspective will remain on the USML, and thus be subject to the strictest licensing requirements, while items of less sensitivity will be moved to the Commerce Control List (CCL).

I want to emphasize a key point: *items moving to the CCL will remain controlled.* They are not being "decontrolled." In specific circumstances, they will be eligible for export under Commerce's more flexible licensing mechanisms. Overall, I am confident that the new lists will permit State to continue to perform its national security and foreign policy mandates in export licensing, including the review of license applications under the Commerce system.

I will also note that we are making tremendous progress in the effort to rewrite the categories. We have published twelve rebuilt USML categories in the *Federal Register* in proposed form for public comment. The proposed rules for the seven remaining categories have been drafted and are currently either undergoing or awaiting interagency review so that we can then publish them for public comment.

We have benefited significantly from this public process, which has included sharing the draft proposed rules with Congress before their publication. The inputs we have received – from Congress and from industry – have bolstered the careful and considered process we have undertaken in rebuilding the lists. This has also brought Congress into the process earlier, a key feature of our improved Congressional notification process for list review and arms sale issues.

The Department sent a formal Congressional Notification to the Hill for Categories VIII (Aircraft) and XIX (Engines) on March 11, and published these rules in final form on April 16. This statutory notification came at the end of informal consultations on these specific rules that began in the fall of 2011. This is the first pair in a series of final rules that will put in place the rebuilt export control lists. Notifications and the subsequent publication of other final rules will occur on a rolling basis. Our goal is to publish the revised USML in its entirety by the end of this year.

In addition to revising the control lists, we are updating our regulations in other ways to further streamline the licensing process. For example, we published a revised definition of "specially designed" on April 16. We will also be revising the definitions of "public domain," and "defense services", and we are drafting new exemptions for replacement parts and incorporated articles, as well as revising and clarifying the exemption for exports made by, or made for, the U.S. Government. These rules will appear during the next several months.

In the third and final phase of work, the Administration will work with Congress to seek legislation to bring the reform initiative to its logical conclusion by creating a single export control agency. The Administration still has much more work to do to complete our work in the second phase, which is a pre-requisite to the third phase, so no decision has been made yet on when we will approach this effort. We will continue to fully engage Congress on this issue.

I want to thank you for your continued support the Administration's Export Control Reform initiative. We look forward to working with you to accomplish this initiative that promises to bolster our national security, strengthen foreign policy goals, and protect and increase American jobs.

With that, I want to thank you for inviting me to testify and am happy to answer your questions.

STATEMENT OF THE HONORABLE KEVIN J. WOLF, ASSISTANT SECRETARY OF COMMERCE FOR EXPORT ADMINISTRATION, BUREAU OF INDUSTRY AND SECURITY, U.S. DEPARTMENT OF COMMERCE

Mr. WOLF. Chairman Royce, Congressman Sherman, members of the committee, I am pleased to be here today to discuss the President's Export Control Reform Initiative. As both of you said well in your introductions, the Obama administration is in the midst of the most comprehensive effort to reform our export control system in history. It will significantly enhance the national security, foreign policy and economic interests of the United States. It has taken unprecedented interagency cooperation, extensive consultation and discussion with Congress, and significant input from the public in order to bring about a reform of the Cold War-era system that we have now.

As best described in a speech that then Secretary of Defense Gates gave in April 2010 on the subject, "Fundamentally reforming our export control system is necessary for national security." And what he meant by that is that our national security will be enhanced if our system allows for greater interoperability with our close allies, it reduces the current incentives in the system for foreign companies in allied countries to design out and avoid U.S. origin content, and allows the administration to focus its resources on more of the transactions of concern.

The Commerce Department's Bureau of Industry and Security plays a unique role in this process. We are the only U.S. Government agency with trained staff focused on both the administration and the enforcement of export control Laws. This includes also educating the public on the rules, performing engineering and regulatory analysis of actual and proposed rules for purposes of making licensing determinations and proposed changes, and conducting enforcement analysis and investigations in order to help bring violators to justice.

These technical skills combine with the judgments of the Departments of Defense, Energy and State to make decisions on licensing policy and applications for dual-use and other items, and until now a handful of less sensitive military items. In addition, BIS's law enforcement assets augment those of the Department of Homeland Security and the Department of Justice to investigate and prosecute violators criminally and administratively, as well as to further inform the intelligence community on policy and enforcement related activities.

The export control effort that we are engaging in is a paradigm shift in how the U.S. Government implements U.S. export controls. In the near term, as was just described, that shift entails the transfer of tens of thousands of less significant military items that don't warrant the controls of the U.S. Munitions List to the more flexible controls of the Commerce Control List, a list that allows for both comprehensive embargoes and prohibitions as well as more flexible license exceptions for trade with certain allies and other countries.

Although all these changes can be made in accordance with the notification provisions of Section 38(f) of the Arms Export Control Act and the new legislation pertaining to satellites, there are a

number of authorizations that Congress could enact in the short term to enhance the effectiveness of the U.S. export control system. Of course, when we move beyond rewriting the lists and merging them into one, legislation, as was just described, will be needed to establish a single list as well as a single licensing agency and a primary enforcement coordination agency, the three final pieces of the fundamental reform envisioned by the effort. We are committed to working closely with Congress when we approach this phase of the initiative.

In 2010, Congress granted BIS permanent law enforcement authorities as part of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, CISADA. However, BIS's authorization for non-enforcement related EAR activities under Section 109(d) of CISADA expires in 2013, later this year. We believe this authorization should be extended and that the confidentiality protections of Section 12(c) of the Export Administration Act should be made permanent.

Additional resources would increase Commerce's operational efficiencies and activities. The President's Fiscal Year 2014 budget requests $8.2 million for additional resources to augment BIS enforcement capabilities. These include additional analysts, special agents, and three new export control officers, two of whom would be dedicated to conducting end-use checks in STA-eligible countries, with the third expanding our regional footprint in the Middle East.

Anyway, thank you very much for the opportunity to testify on this topic. I would be pleased to answer any questions that you have, and I now turn the floor over to my friend and colleague, DTSA Director Jim Hursch.

[The prepared statement of Mr. Wolf follows:]

Before the Committee on Foreign Affairs
U.S. House of Representatives

Hearing on

Advancing Export Control Reform: The Agenda Ahead

Statement of
Kevin J. Wolf
Assistant Secretary of Commerce
Bureau of Industry and Security
United States Department of Commerce

April 24, 2013

Chairman Royce, Ranking Member Engel, and Members of the Committee, I am pleased to be here today to discuss the President's Export Control Reform (ECR) initiative. The Obama Administration is in the midst of the most comprehensive reform of our nation's export control system in history, which will significantly enhance the national security, foreign policy, and economic interests of the United States. It has taken unprecedented interagency cooperation, extensive consultations with the Congress, and voluminous inputs from the public to improve our Cold War-era system so it can address the threats and opportunities of today through secure export facilitation measures coupled with stronger compliance and enforcement safeguards to protect members of our armed forces and citizens from harm.

The Role of Export Control Reform in Safeguarding U.S. Interests

,From the beginning, this Administration's ECR effort has been about national security. Such reform would serve to focus our controls and U.S. Government resources on those items and destinations of greatest concern. All of us on this panel know that there are countries and non-state actors that seek unauthorized access to our most sensitive military and dual-use items. Properly calibrated export controls and enforcement play a critical role in safeguarding U.S. national security interests while facilitating secure trade to legitimate end users.

The Commerce Department's Bureau of Industry and Security (BIS) plays a unique role in this process. We are the only U.S. Government agency with trained staff focused on both the administration and enforcement of U.S. export laws, including: educating the public about export controls, performing engineering and regulatory analyses of controlled items for licensing

purposes, and conducting enforcement analysis and investigations to bring violators to justice. These technical skills combine with the judgment of the Departments of Defense, Energy, and State to render decisions on licensing policy and applications for dual-use items -- and up until now, a handful of less sensitive munitions items. In addition, BIS's law enforcement assets augment those of the Department of Homeland Security and the Department of Justice to investigate and prosecute violators criminally and administratively, as well as further inform the Intelligence Community (IC) on both policy and enforcement activities.

ECR represents a paradigm shift in how the U.S. Government implements export controls. In the near term, that shift entails the transfer of tens of thousands of less sensitive munitions items to the Commerce Control List (CCL) to facilitate military interoperability with allies and partners as well as strengthen the competitiveness of the U.S. defense and space industrial base while taking advantage of interagency compliance and enforcement assets. The President's initiative will result in a more secure and innovative America.

Safeguarding U.S. Munitions List Items Moving to the Commerce Control List

The Department of Defense established the national security rationale that resulted in the identification of U.S. Munitions List (USML) defense articles that continue to warrant control on the International Traffic in Arms Regulations (ITAR). The majority of these items will be identified on a new "positive" USML, which establishes controls based on objective performance parameters that provide clarity to exporters, enforcement agents, and prosecutors to determine the proper jurisdiction of an item. Munitions and satellite-related items not meeting these USML control requirements will be transferred to the CCL, where they will be subject to tailored controls. These tailored controls will maintain ITAR-like restrictions on countries, like China, subject to U.S. arms embargoes, while providing export flexibility to facilitate interoperability among our allies and partners.

Transparent Regulations to Increase Compliance

Transparent regulations are fundamental to the President's secure trade facilitation and strengthened compliance and enforcement paradigm. Exporters need clarity, reliability, and predictability with regard to export control rules, all of which are improved through this reform effort. These reforms will create a clearer, more reliable and more predictable export control system by creating bright lines between agencies' jurisdictions thus ensuring that industry is able to easily self-classify their items; that the U.S. Government can more easily make jurisdictional determinations on items; and that prosecutors will have greater confidence in bringing forward cases based upon the clearer rules. In other words, secure trade will be facilitated, and malicious actors will be thwarted.

In addition to positive lists, our new definition of "specially designed" plays a significant role in enhancing predictability. Currently neither the ITAR nor the Export Administration Regulations (EAR) have objective, comprehensive definitions of the catch-all terms of art that are meant to control many defense articles or dual-use items. In the ITAR, the undefined term is "specifically designed." In the EAR, the term is "specially designed" and is defined as *exclusive use* in one context and not defined in any other. The lack of a clear, common definition also

undermines predictability. Engineers with the best of intentions can disagree over the meaning of these terms. This has led to many exporters either making their own decisions about what should be controlled, which can result in under-control, or U.S. Government officials disagreeing over whether something is controlled on one list or another, which can either result in the over-control of certain items, or worse, undermine enforceability.

The new, complementary definitions of "specially designed" in the ITAR and EAR address this flaw and provide objective criteria for exporters, licensing officers, and enforcement officials to determine whether an item is subject to control or eligible for decontrol (e.g., it is a specified item (screw, bolt, etc.), determined by State or Commerce not to be controlled, incorporated into an uncontrolled item in serial production). Such decisions require exporters to document their findings, thereby creating a paper trail for subsequent compliance and enforcement actions, if necessary. For example, in the case of development of an item, documentation about intended end use must be contemporaneously created, thereby eliminating the opportunity to make retroactive classifications after production to avoid control. This will make company and government decisions more predictable and government regulations more enforceable.

A "positive" list with defined terms also will assist U.S. Customs and Border Protection (CBP) in deciding whether to detain shipments. This will expedite legitimate exports and help prevent illegitimate ones.

Leveraging Interagency Resources to Enhance Monitoring and Enforcement

Leveraging interagency resources is critical to building higher fences. Commerce and State are working together on a joint outreach program, including web-based tools, to educate exporters on USML-CCL changes. To streamline licensing and avoid exporters having to receive authorization from two different agencies for transactions involving CCL items used in or with defense articles, the President signed Executive Order 13637 on March 8, 2013 delegating to the Secretary of State authority to license such CCL items. For those CCL items licensed by State pursuant to this Executive Order, the Department of Commerce will retain enforcement authority, which requires State and Commerce to coordinate on licensing and compliance issues. The new information technology system (i.e., USXPORTS) we are developing with the Department of Defense, along with information sharing protocols Commerce and State are establishing, will increase U.S. Government efficiencies in this regard.

Commerce has hired 22 licensing and compliance officers dedicated to processing and monitoring munitions transactions subject to the CCL on its new "600 series" (items transferred from the USML). In addition, Commerce, working directly with the Intelligence Community, administers the Information Triage Unit, which compiles, coordinates and reports intelligence and other information about foreign transaction parties to license applications. This interagency center combines the analytical resources of Commerce, Defense, Energy, and the IC to produce products for all agencies involved in the review of, *inter alia*, EAR export licenses.

The leveraging of interagency resources is particularly important with regard to enforcement of 600 series and satellite-related exports. Dedicated Commerce criminal

investigators and enforcement analysts will be added to the existing pool of resources investigating transactions suspected of violating and monitoring compliance with the EAR.

Commerce enforcement officials bring unique capabilities and authorities to investigate and monitor export activities. Our Export Enforcement Special Agents conduct criminal investigations and the Bureau of Industry and Security (BIS) can bring to bear unique administrative authorities – such as civil penalties, temporary and long-term denial orders, and Entity List and Unverified List designations – that can be more powerful than criminal sanctions by taking away a company's ability to export or a foreign company's ability to obtain U.S.-origin items. We have seen time after time that our Entity List drives front companies out of business and legitimate businesses to change their behavior to become responsible stewards of international trade. For example, in October 2012, BIS added to the Entity List the names of 165 companies and individuals involved in an illicit procurement network for Russian military and intelligence end users and end uses. We have received multiple requests for appeal, one of which has been granted to date, where the foreign intermediaries have agreed to change their business practices to comply with U.S. export control rules.

Additionally, we have seven Export Control Officers (ECOs) stationed in five embassies and one consulate abroad (China, Hong Kong, India, Russia, Singapore, and the United Arab Emirates (UAE)), with operational responsibility for 29 countries, dedicated to conducting on-site end-use checks. The President's FY 2014 budget requests three additional ECOs. These assets are augmented by Special Agent-led Sentinel Teams and Foreign Commercial Service officials that conduct end-use checks worldwide. We will leverage these assets in coordination with those of the Blue Lantern program at the Department of State to increase the U.S. Government's footprint of end-use checks where USML defense articles are co-located with CCL items. And where U.S.-origin satellite exports are concerned, Department of Defense officials will continue to perform launch monitoring in the same manner as they do today, regardless of whether the satellite is subject to the ITAR or EAR.

The combined strength of Commerce, Homeland Security, and Justice forms the senior management team of the Export Enforcement Coordination Center, a multiagency organization housed in Homeland Security per Executive Order 13558 that includes eight departments and 15 agencies and the Intelligence Community. This organization coordinates the sharing of enforcement information and deconflicts enforcement activities to create investigative efficiencies. It also serves as a key conduit between the U.S. Intelligence community and Federal export enforcement agencies for the exchange of information related to potential U.S. export control violations. To date, 60% of E2C2 deconfliction requests identified another agency that may have relevant information related to the targets of the investigation.

We have had numerous recent successful criminal prosecutions, administrative sanctions, and extraditions under the International Emergency Economic Powers Act, or IEEPA, in enforcing the EAR. One example involves the export of microwave amplifiers to China. Fu-Tain Lu, owner and operator of Fushine Technology in Cupertino, California, facilitated the export of a microwave amplifier to Everjet Science and Technology Corporation in China, after being notified that the item required a license for export. The amplifier was restricted for export to China for national security reasons. On November 17, 2011, Lu pleaded guilty to violating

IEEPA, and on October 29, 2012, was sentenced to 15 months in federal prison, three years of supervised release, and a fine of $5,000, as well as ordered to forfeit a seizure valued at $136,000.

Another recent criminal conviction involves Jeng Shih, a U.S. citizen and owner of Sunrise Technologies and Trading Company of Queens, New York. From 2007 through 2010, Shih conspired with a company operating in the UAE to illegally export U.S.-origin computer equipment through the UAE to Iran. Shih and Sunrise caused the illegal export of over 700 units of computer-related goods to Iran via the UAE. On October 7, 2011, Shih and Sunrise pleaded guilty to conspiracy to violate the IEEPA and to defraud the United States. On February 17, 2012, Jeng Shih was sentenced to 18 months in prison, two years of supervised release, a shared forfeiture with Sunrise Technologies of $1.25 million, and a $200 special assessment. Sunrise Technologies was sentenced to two years of corporate probation, the shared forfeiture, and a $200 special assessment. On October 11, 2011, pursuant to the global settlement, BIS issued Final Orders against Shih and Sunrise for a 10-year denial of export privileges (suspended) for their role in the illegal export of commodities to Iran.

In December 2012, as the result of a BIS investigation, the Chinese firm China Nuclear Industry Huaxing Construction Limited pled guilty to conspiracy to violate IEEPA and the EAR related to the illegal export of high-performance coatings through China to a nuclear reactor under construction in Pakistan. This is believed to be the first time a Chinese corporate entity has pled guilty to export control violations in a U.S. court. On December 3, 2012, Huaxing was sentenced to the maximum criminal fine of $2 million, $1 million of which will be stayed pending successful completion of five years of corporate probation. In a related administrative settlement with BIS, Huaxing has agreed to pay another $1 million and be subject to multiple third-party audits over the next five years to monitor its compliance with U.S. export laws.

In the case of Hing Shing Lau, the U.S. was able to successfully extradite a defendant from Canada on charges related to the export of thermal imaging cameras to China. Lau, a Hong Kong national, attempted to export twelve thermal imaging cameras from the United States to Hong Kong without first obtaining the required export licenses from the Department of Commerce. When Lau arrived in Canada to complete the transaction on June 3, 2009, he was apprehended by Canadian law enforcement authorities pursuant to a U.S. arrest warrant. Lau was extradited to the United States in October 2010. Lau entered a plea agreement and was sentenced to 10 months' imprisonment in May 2012.

These actions demonstrate the effectiveness of Export Enforcement at BIS in aggressively pursuing investigations under IEEPA and the EAR to prevent unauthorized export transactions, and are a harbinger for the enforcement posture that the Administration will apply with regard to 600 series and satellite-related items that move from the USML to the CCL as part of the President's ECR initiative.

Complementary Controls between the ITAR and EAR

The Administration is ensuring that the United States maintains fidelity with its commitments under the international export control regimes. No munitions or satellite-related items transitioning to the CCL will be decontrolled unless explicitly determined by the Departments of Defense and State, consistent with such commitments and national security.

CCL controls on munitions and satellite-related items transitioned from the USML will complement ITAR controls with regard to most exports and reexports. Unless these items are destined for one of 36 allied and partner governments as authorized under License Exception Strategic Trade Authorization (STA) or have been expressly identified as less significant, all such exports will require a license and be subject to an ITAR-like licensing policy. All munitions and satellite-related exports destined for countries subject to a U.S. arms embargo, including China, will be subject to a licensing policy of denial and a zero percent *de minimis* rule. Other munitions and satellite-related exports will be subject to a 25 percent *de minimis* rule to avoid the "design-out" of U.S.-origin products, which is an unintended consequence of the ITAR. Enforcement to prevent the unauthorized reexport of these CCL items will remain the same as it is today under the ITAR with the added benefit that Commerce enforcement resources will be available to monitor and investigate possible violations.

As noted above, a significant difference between the ITAR and EAR will be the application of License Exception STA to and among allied and partner destinations for certain 600 series and satellite-related exports and reexports. Prior to export and all subsequent reexports of any STA-eligible transaction, the exporter must notify its customer of the CCL classification of an item and receive a written certification that the customer will comply with the EAR and maintain associated records. For 600 series items, new strengthened safeguards will limit the availability of STA to ultimate government end use in one of the 36 countries, require all foreign parties to have been previously approved on a Commerce or State license, and require all foreign parties to agree to an end-use check. As has always been the case for items subject to the EAR, government end users of 600 series items, including STA members, will be subject to Commerce's end-use check program.

There is no requirement that exporters avail themselves of STA. We believe its impact will be measurable, though, in terms of facilitating interoperability with allies and strengthening the U.S. defense and space industrial base by reducing current incentives for foreign manufacturers to "design out" controlled U.S.-origin parts. In fact, we conservatively estimate that 50 percent of the 40,000 ITAR licenses associated with items moving to the CCL could be eliminated under STA, with no diminution of national security due to the strengthened safeguards discussed above.

Even the least significant munitions items on the CCL will continue to be controlled to China, Cuba, Iran, North Korea, Sudan, and Syria. And new Automated Export System validations will enable, *inter alia*, Commerce and DHS officials to target these exports, as well as those subject to STA.

Entry-into-Force of Changes

Notwithstanding the positive impact that these changes will have for exporters and the U.S. Government, the Administration recognized early on that changes of this proportion require a phase-in period for companies to adjust their internal compliance and information technology systems. Accordingly, changes of jurisdiction are taking place 180 days after the publication of State and Commerce final rules covering a specific USML category of items; the first two of which, involving military aircraft and gas turbine engines, were published on April 16. While companies are free to submit license applications to Commerce during this interim period, EAR authorizations will not take effect until the 180 days has elapsed.

Even after this 180-day period expires, generally, persons holding a valid ITAR license may export under that license for up to two years. This is in addition to exporters being able to take advantage of the State Department's delegation of authority for licensing CCL items used in or with a USML item. Subsequent categories, or groups of categories, will be published in final form on a rolling basis in the same manner. These rules provide exporters with sufficient time and flexibility to adjust to the changes and take advantage of the most advantageous export authorization permitted under the ITAR or EAR.

The Role of the Congress in Export Controls

The President's ECR initiative creates regulatory transparency and clarity, facilitates exports to our allies and partners, strengthens the U.S. defense and space industrial base, and enhances the enforcement posture of the U.S. Government to ensure strengthened safeguards for the items that matter most. While all of these changes can be made in accordance with the consultation provisions of Section 38(f) of the Arms Export Control Act, there are a number of authorizations that Congress could enact in the short-term to enhance the effectiveness of the U.S. export control system. Of course, when we move beyond rewriting the lists to merging them into one, legislation will be necessary to establish a single list as well as a single licensing agency and a primary enforcement coordination agency, the three final pieces of the fundamental reform envisioned by this initiative. We are committed to working closely with Congress when we approach this phase of the initiative.

In 2010, Congress granted BIS with permanent law enforcement authorities as part of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA). However, BIS's authorization for non-enforcement-related EAR activities under section 109(d) of CISADA expires in 2013. We believe this authorization, in addition to the confidentiality protections of Section 12(c) of the Export Administration Act, should be made permanent.

Commerce has made clear that additional resources would increase operational efficiencies and activities. The President's Fiscal Year 2014 budget requests $8.291 million for additional resources to augment BIS enforcement capabilities. These include additional analysts, Special Agents, and three new Export Control Officers, two of which would be dedicated to conducting end-use checks in STA-eligible countries, with the third expanding our regional footprint in the Middle East.

Thank you for the opportunity to testify on this important topic. I would be pleased to answer any questions you may have.

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STATEMENT OF MR. JAMES A. HURSCH, DIRECTOR, DEFENSE TECHNOLOGY SECURITY ADMINISTRATION, U.S. DEPARTMENT OF DEFENSE

Mr. HURSCH. Thank you, Mr. Chairman, Congressman Sherman and members of the committee, for the opportunity to discuss the Department of Defense's perspective on our work on export control reform. I would like to highlight briefly why this initiative is of such great importance to our national security and therefore to the Department of Defense.

The hard work by the Departments of Defense, State, Commerce and other agencies has moved us closer to President Obama's vision of fundamentally reforming our export control system—a vision that has been supported by Secretary Gates, Secretary Panetta, and now Secretary Hagel. At the same time we still have much work ahead to achieve a more transparent, flexible, efficient and enforceable system based on the four singles of reform: A single control agency, working with a single control list, on a unified IT system, and supported by coordinated enforcement activities. The Department of Defense remains committed to this effort because it will enhance our national security in several ways.

First and foremost, the goal of our revised controls is to be clearer and better focused on protecting those items and technologies that give our war fighters a military edge. We should concentrate our efforts on the crown jewel technologies to support our forces and protect our investments. For other important items, we should be more willing to share with our allies and partners, thus the second reason for DoD support.

In the new strategic environment, coupled with increasing fiscal constraints, we rely more heavily on allies and partners to take on more of the security burden. While the U.S. will maintain the capabilities to defeat any adversary anytime and anywhere, we will seldom go to war alone. This means it is in our national interest to equip our partners and increase their military capacity to meet mutual security needs. More flexible licensing requirements for certain items means that our allies will no longer have to wait for a license for an essential but militarily insignificant spare part such as a hose or a switch. Of course, we do recognize that with increased flexibility and speed come compliance and enforcement needs.

Accordingly, the administration has established new safeguards for these more flexible authorizations to mitigate risks. We will continue to have a policy of denial for items moved from the U.S. Munitions List to the Commerce Control List 600 Series, if destined to embargoed or sanctioned countries, including China, including the re-export of any 600 Series item integrated into a foreign system.

It is also important to note that export control reform will promote the health of our defense industrial base. It will help U.S. exporters, particularly our defense industry, to compete more effectively. This will in turn provide incentive for them to invest in advanced technologies that will enable the U.S. military to maintain its superiority in the future. The recent legislation, which returned the authority to determine the controls of satellites and related items to the President that was mentioned by both the chairman and the ranking member, will be an example of how reform can

provide an important boost to a very important segment of our industrial base.

We are moving forward to meet the reporting requirements set forth in the legislation on that matter and to send the draft regulations out soon for public comment. Rewriting our controls is an important interim step toward a single control list and will allow us to spend much less time discussing commodity jurisdiction issues to determine whether an item should be controlled on one list or another. The technology, not the jurisdiction, should be our focus.

Again, the Defense Department is committed to fundamental reform and strongly supports continued efforts to establish a single control list and a single control agency. Our national security will not be served if we stop halfway. We must ensure that we protect those few critical technologies that are critical to our U.S. military superiority and establish new export control mechanisms that best serve the national security objectives of this reform effort.

Thank you for the opportunity to speak to you today, and I look forward to answering any questions you may have.

[The prepared statement of Mr. Hursch follows:]

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THE HOUSE FOREIGN AFFAIRS COMMITTEE

STATEMENT OF

DIRECTOR, DEFENSE TECHNOLOGY SECURITY ADMINISTRATION
MR. JAMES A. HURSCH

BEFORE THE HOUSE COMMITTEE ON FOREIGN AFFAIRS
APRIL 24, 2013

NOT FOR DISTRIBUTION UNTIL RELEASED BY
THE HOUSE FOREIGN AFFAIRS COMMITTEE

Thank you Mr. Chairman, Ranking Member Engel, and Members of the Committee, for the opportunity to discuss the Department of Defense's perspective on the successes of our work on Export Control Reform. Two years ago, former Principal Deputy Under Secretary of Defense for Policy, and now Under Secretary of Defense for Policy, Dr. James Miller, sat before this Committee and described the importance of overhauling the U.S. export control system. A functional export control system remains critical to ensuring that our Allies and partners can help us to meet global security challenges.

I am pleased to report that the hard work of all those involved in the Department of Defense, at Commerce, State and other agencies, has moved us closer to President Obama's vision of fundamentally reforming of our export control system—a vision supported by Secretary Gates, Secretary Panetta, and now Secretary Hagel. At the same time, we still have much work ahead to achieve a more transparent, flexible, efficient, and enforceable system based on the four singles of reform: a single licensing agency, working with a single control list, on a unified (IT) information technology system, and supported by coordinated enforcement activities. The Department of Defense remains committed to this effort because it will enhance our national security by allowing us to better protect those technologies that give our warfighter the technological edge on the battlefield and prevent our adversaries from acquiring technologies that can be used against us.

I would like to thank Members of Congress and your staffs for allowing us to explain our proposed changes to the first two categories—on aircraft and military engines—during the recent notification process. The completion of the first 38(f) was an important milestone for us, and will help us move forward, in concert with Congress, on the remainder of categories over the coming months. Our testimony today is the culmination of continuous briefings to Congress and industry since 2010.

I am also very pleased that recent legislation returned to the President the authority to determine controls on satellites and related items, which I will turn to in detail later in my testimony. Let me begin today by discussing Export Control Reform to date.

First and foremost, the goal of our revised controls is to be clearer and better focused on protecting those items and technologies that give our warfighters a military edge. As noted in previous Department of Defense testimony, our forces should always have the technological

advantage. Our new controls will help us better protect and leverage for a longer period of time those "crown jewel" technologies that give our military the decisive edge.

Second, the new strategic environment, coupled with increasing fiscal constraints, necessitates that we rely more heavily on Allies and partners to take on more of the security burden. While the U.S. will maintain the capabilities to defeat any adversary, anytime, anywhere, we will seldom go to war alone. This means it is in our national interest to equip our partners and increase their military capacity to meet mutual security needs. More flexible licensing requirements for certain items means that our Allies will no longer have to wait for a license for an essential, but militarily insignificant, spare part, such as a hose or switch. Reduced delays in repair time will help ensure that their systems can continue to support missions in areas where the U.S. may not be present or to fight alongside us in coalition operations.

Third, we do recognize that with increased flexibility and speed come compliance and enforcement needs. Accordingly, we have established new safeguards for these more flexible authorizations to mitigate risks. Exports of end-items and significant parts and components moved from the U.S. Munitions List (USML) to the Commerce Control List (CCL) "600 series" will continue to be subject to a policy of denial, if destined to embargoed or sanctioned countries, including China, including the reexport of any 600 series item integrated into a foreign system. The Department will continue to review license applications to determine whether they pose national security concerns.

We also carefully considered which countries to include in the list of those eligible for receiving under a license exception items transferred from the USML to the "600 series" on the CCL. The Administration is prepared to consider changing the list of countries on a case-by-case basis if they are, for example, members of security and export control regimes, and share common security interests. However, even in the case of our closest Allies, we are vigiliant. The Strategic Trade Authorization License Exception mandates safeguards, including strict record-keeping and, for items moved to the CCL "600 series," adherence to an ultimate "government end-use only" requirement for exports of end-items and significant parts and components.

Fourth, export control reform will promote the health of our industrial base. It will help U.S. exporters—particularly our defense industry—to compete more effectively. This will in

turn provide incentive for them to invest in advanced technologies that will enable the U.S. military to maintain its superiority in the future.

Let me explain the important work accomplished to rewrite our export control lists. This has been a painstaking and thorough effort that involved experts throughout the Department of Defense, the U.S. interagency, the private sector, and scholars. For DoD, this rewrite effort reflects a sea change in the way we approach and execute export controls. We have found balance between protecting our more significant weapons platforms and the imperative to share more capabilities with Allies and partners. DoD took the lead in the baseline assessment and review of controls on the USML, involving a broad range of experts at our labs, in the Services, and across other components. Thousands of hours were spent identifying, evaluating and writing new controls that would adequately protect our most critical capabilities.

I will use the F-16 to illustrate how we decided which items should remain on the USML—an attempt to create a "bright line" between the two control lists. First and foremost, we decided the F-16 itself should remain on the USML, as well as other aircraft that perform essential military or intelligence missions, such as attack helicopters; intelligence, surveillance, and reconnaissance aircraft (ISR); and electronic warfare, airborne warning, and control aircraft. Our experts then identified the specific components and related technologies that provide key military or intelligence capabilities. Thus, in addition to the F-16, we also left on the USML its most sensitive components and weapons capabilities, such as the missile launchers, radar warning receivers, and laser/missile warning systems. These will continue to be subject to world-wide, except for Canada, licensing requirements under the International Traffic in Arms Regulation (ITAR). Other parts and components, such as the wings, rudders, fuel tanks, and landing gear, which, while essential to the functioning of the F-16, were determined not to provide a critical military capability. They were thus moved to the new "600" series of the Commerce Control List in order to provide greater licensing flexibility. These parts and components still receive careful consideration and require licenses, except where destined for ultimate end-use by the governments of our closest Allies and partners in accordance with the new safeguard measures. The end-items will require licenses to all destinations, with certain exceptions for Canada. These items may become eligible for more flexible licensing only after careful review and agreement by all agencies.

Our experts similarly analyzed the other eighteen categories of the USML. We carefully designed the revised lists to clearly define what is controlled on which list, and to complement each other, so that the two can eventually be merged into one list. We worked closely with our interagency counterparts to craft new controls on the USML and corresponding controls on the CCL. We carefully reviewed all public and Congressional comments and revised our controls when appropriate.

As I mentioned, I am also very pleased that recent legislation returned to the President the authority to determine controls on satellites and related items. As already shown in our NDAA Section 1248 report on satellite controls, we are carefully crafting controls to ensure that key satellites systems, technologies, launch services, and know-how that provide the United States with a military or intelligence advantage in space remain under USML licensing requirements. The 1248 Report recommended that commercial communications and less technologically advanced remote sensing satellites and related components be moved to the Commerce list. These items are similar to those readily available from other space capable nations and are more appropriately designated as dual-use. This change will protect national security capabilities. At the same time, it facilitates international cooperation, improves the competitiveness of the U.S. space industry, and strengthens our space industrial base which we rely upon for civil, commercial and national security space missions.

Let me underscore that we will establish a policy of denial for transfers of dual-use and commercial satellites and related items to prohibited countries such as China and state sponsors of terrorism as stipulated in the recent legislation. I am confident that these regulatory changes will adequately protect our national security interests and adequately protect sensitive U.S. military technology. The new satellite controls, based on the recommendations of the 1248 report, will soon be published for public comment. They are a perfect example of how we came to a win-win situation: protection of our most sensitive and decisive technologies, while adhering to a careful but more flexible set of controls for less significant technologies.

Rewriting our controls is an important interim step toward a single control list. We will spend much less time discussing commodity jurisdiction issues to determine whether an item should be controlled on one list or another. It will help create a coherent system in which we allocate resources toward protecting what is truly important for our national security.

Turning now to another important element of our export control reform efforts – the single IT system. The new system is being built on the backbone of DoD's USXPORTS system. By integrating the Departments of Commerce and State licensing functions into DoD's existing system, we have created a powerful tool designed to reduce license processing times by providing more flexibility and automation in staffing across the interagency. USXPORTS will also improve transparency to those agencies reviewing export license applications. This system will enable all of our interagency analysts to efficiently scrutinize complex licenses involving critical technology. It will also enable our analysts to quickly resolve and clear large numbers of licenses that may not require extensive interagency review. The single system will benefit both government and industry. We are on track to have the Department of State begin adjudicating munitions licenses on USXPORTS within the next few months. While we have made significant progress with the Department of Commerce, we have had to delay work on deploying USXPORTS at Commerce due to the impacts of sequestration.

I would also like to point to two other successes in fortifying our export control system. The multiagency Export Enforcement Coordination Center, led by DHS and comprised of 17 Federal agencies and the Intelligence Community, has been successful in de-conflicting over a thousand cases, thus strengthening our ability to stop illegal exports and exporters who seek to circumvent our controls. DoD is also working closely with the multiagency Information Triage Unit, located at the Commerce Department, on coordination of end-user assessment for export licenses.

I think it is also important to understand that DoD sees Export Control Reform as an integral component of a larger set of complementary initiatives intended to support our security cooperation objectives in a more efficient and effective way. Collectively, these initiatives will facilitate security cooperation in general and the transfer of technology in particular. First, under the rubric of security cooperation—a separate endeavor from ECR—DoD has changed the way we execute security cooperation, based on better planning and more precise assessments of partner requirements, and a more efficient Foreign Military Sales process.

Second, DoD has also consolidated decision making of multiple technology security and foreign disclosure processes under a single, high-level steering group – the Arms Transfer and Technology Release Senior Steering Group – to ensure the Department has a coordinated approach to deciding which sensitive technologies, such as electronic warfare and unmanned

aerial systems, are released to foreign partners and Allies. These efforts are complemented by other acquisition reform efforts.

In conclusion, we have made significant progress since we last testified in front of this Committee. The Department is committed to fundamental reform and strongly supports continued efforts to establish a single control list and a single control agency. Our national security will not be served if we stop mid-way. We must ensure that we protect those few critical technologies that are central to our U.S. military superiority and establish new export control mechanisms that best serve the national security objectives of this reform effort.

Thank you for the opportunity to speak to you today. I look forward to answering any questions you may have.

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Chairman ROYCE. Well, the most immediate would come to mind is as Mr. Sherman points out, we have had this dialogue for many years now, and when do you intend to submit legislative details of the proposal in terms of that new single licensing agency?

Mr. HURSCH. When we first have briefed this and in the task force report, we set up a three-phase plan to do fundamental export control reform. We are into phase 2 and working through that with the revised lists that we have published for public comment and will submit for congressional consideration through the 38(f) process. We believe we need to get further down the road with that before we submit legislation to enable that. And we will work closely with you when that time comes.

Chairman ROYCE. Well, the Export Administration Act is expired, so what you are using now, for a number of years now, is emergency authority to carry out the Commerce Department's basic licensing and enforcement activities, and hence, the desire on our part either to work together with you in terms of updating and reauthorizing or replacing that expired act.

And one of the things I was going to ask you is the impact that the expiration may have had on enforcement efforts to combat illegal technology transfer. With you operating under emergency powers now and without us moving forward to actually reauthorize the act or replace it or not having received the submission of your details for your proposal, has it had an impact on that?

Mr. WOLF. With respect to the enforcement of the existing regulations it has had no impact. There is a significant number of, over the years, civil and criminal actions that have been taken and maintained to that end under the International Emergency Economic Powers Act. As I described in my testimony and in a little bit more detail in my prepared remarks, there is a little bit more that can be done. But with respect to the ability to bring and maintain criminal and civil enforcement actions it hasn't had an impact.

Chairman ROYCE. Let me ask you just for a minute, should we be able to get this proposal out there and get this done? What would it mean for U.S. exporters as a consequence? What is the payoff, if you could——

Mr. WOLF. Are you referring to the single enforcement agency?

Chairman ROYCE. To get the single enforcement agency through to the finish line, what then would that——

Mr. WOLF. Oh, the payoff for national security we have just described very well on the panel, but with respect to exporters the goal is a more efficient, more organized, more transparent system than what we have now.

Chairman ROYCE. Maybe in dollar terms, if you could quantify that for——

Mr. WOLF. Well, we don't have a dollar estimate with respect to the particular economic benefit, but in the end it will result in a dramatically more efficient system.

Chairman ROYCE. That is our hope, and I think that is why we need to see the details of the proposal. I think there is one item that I have long been concerned about and I guess I will bring it up here. And that was Viktor Bout's ability, frankly, his machinations around the globe to get his hands on the transfer of military equipment. And a lot went into bringing him to the bar of justice.

Not only his capture, but getting him extradited here was something we were very involved in.

So we have got a situation where motivated by profit, and we have a situation where arms brokers search for ways to funnel arms to terrorist groups and to rebel groups, and many of the items being proposed to move from the Munitions List to the Commerce List have clear military value to a guy like Bout. He would be very focused on that. Presently, pre-export checks allow the government to identify risks of diversion or other illicit activities.

With intelligence information gleaned from those checks, the U.S. Government then stops U.S. companies from working with these shady brokers. That has been our experience. If you could explain the types of pre-export checks that military items moved to the Commerce List will receive for companies seeking to export to the 36 destinations judged to be of low risk, I think once these goods get to Europe that is going to be the test of your implementation of your enforcement. I just wanted to get some feedback on that, Mr. Wolf.

Mr. WOLF. Sure. With respect to the use of the license exception, Strategic Trade Authorization, a condition is that all of the foreign parties have gone through the U.S. Government licensing system before so that they have been vetted, effectively, the same way that they would be vetted now. In addition, there is a limited number, a listed group of items, not all items that would warrant it, and it is only for ultimate end use by the governments of those 36. To the extent those and a series of other notification and certification obligations can't be satisfied, then a license would be required from the Commerce Department even to that group of 36.

Chairman ROYCE. Thank you, Mr. Wolf.

Mr. Sherman?

Mr. SHERMAN. Thank you, Mr. Chairman.

Mr. Wolf, China is clearly, or at least Chinese companies, sending technology to Iran. Some of that technology is American. Why haven't we designated China as a country of diversion concern and applied the measures called for by Title 3 of CISADA?

Mr. WOLF. That is actually a State Department question.

Mr. SHERMAN. Okay, Mr. Kelly?

Mr. KELLY. I am sorry. Could I have the question again?

Mr. SHERMAN. Oh. Why haven't we designated China as a country of diversion concern and applied the measures called for in Title 3 of CISADA?

Mr. KELLY. Okay, I will take that question back. Thank you, sir.

Mr. SHERMAN. Okay, we look forward to getting an answer for the record. Mr. Kelly, I will——

Mr. KELLY. I am sorry. I will provide it now. For CISADA, ODNI is required to provide an annual report that identifies each country that the government in which the director believes, based on information available to the director, is allowing diversion of a country of goods, services and technologies described in the act to Iranian end users. The report is classified so we can't go into too much detail in this forum, but what I can say is that the report hasn't yet provided us with a case that would enable us to so designate China or any other country to date. Thank you.

Mr. SHERMAN. Well, several Chinese companies have already been sanctioned, so you have the specifics. And we know how we are very reluctant to do anything that would upset our Chinese friends. And that may be the real reason, but I am sure that the official State Department reason will be provided in greater depth for the record. As I said in my opening statement, one concern I have is that we will use this relaxation not to export goods but to export tools, dies, technology and offshore production.

Without objection, I would like to enter into the record a letter from the International Association of Machinists and Aerospace Workers where they hope that there is a comprehensive review of how the changes, including transfers of items to the CCL, will impact U.S. employment and suppliers. When we export technology rather than products, we lose the jobs and we build the technological base of those not subject to the control of you three gentlemen.

What steps are we taking so that we review the impact of moving a particular item from the State Department list to the Commerce List to see whether that will have the effect of allowing the export of blueprints, tools and dies technology?

Mr. WOLF. That is a very good question. As I said in my introduction, one of the national security justifications for the entire effort is to reduce the current incentives that exist in the system to design out to avoid U.S. origin content. As someone working in this area for over 20 years, I have seen this firsthand.

Mr. SHERMAN. Mr. Wolf, I think I may need to rephrase the question. Many items have already been transferred to the Commerce List.

Mr. WOLF. Yes.

Mr. SHERMAN. The effect of that is to make it easier to export the technology and to do the production abroad. What has been done in this review process, moving an item from one list to another to see whether that will lead to the export of goods or whether that will lead to the export of technology? Mr. Kelly, do you have a response?

Mr. KELLY. Sure. I would just say that the whole rationale behind this reform effort is to enhance our national security. And an important part of that is our defense industrial base.

Mr. SHERMAN. But if I were at random to identify an item that has been moved from one list to another, would you be able to assure me that that liberalization has the effect of making it easier to export goods and will not result or is not likely to result in the export of technology and the offshoring of production?

Mr. KELLY. Well, sir, the basis for transferring from USML to CCL was asking the following question: Does this item contribute to preserving U.S. military advantage? And that was the basis of our decision. And for items that are important to preserving U.S. military advantage, we have kept them on the USML.

Mr. SHERMAN. I would hope you add something else to your criteria and that is, is the action you're about to take likely to lead to offshoring of production, the decline of the U.S. industrial base, the decline of U.S. jobs, and an increase in the industrial technology base of other countries? If you leave that out of the decision making process, what looks like an effort to enhance America's po-

sition will actually hurt it. I ask for unanimous consent to put this letter in the record.

Chairman ROYCE. Without objection, the letter from the Association of Machinists and Aerospace Workers as well as the sanctioned companies mentioned in China will be entered into the record.

Mr. SHERMAN. Thank you, Mr. Chairman. I yield back.

Chairman ROYCE. We go now to Ileana Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Chairman, and thank you to the panelists for excellent testimony. I have consistently been supportive of making common sense improvements in our export control system as long as it enhances our national security and proper procedures are in place to avoid our sensitive technologies from falling into the wrong hands. At a time when our economy is struggling, it is imperative that necessary reforms for our export control system are undertaken in order to help American businesses create jobs and grow our economy.

Has the administration undertaken a detailed economic and regulatory analysis of the impact of these rules on small businesses before they are implemented, and if so, what were the results? Last Congress, I introduced the Export Administration Renewal Act which would have allowed for the removal of the least sensitive items from the U.S. Munitions List, because we can all agree that generic items like bolts, nuts and wires, as you had testified, should not be regulated in the same manner as truly sensitive defense articles.

Streamlining this process would provide U.S. manufacturers immediate benefits, while at the same time would allow for quick common sense reform which we could also all agree on. That the initiative could be implemented in a much timelier manner than some of the reforms set forth by the administration while still ensuring that effort is consistent with our national security interests. However, this is not the path that the administration has chosen. Instead, it has opted to act unilaterally in reforming export controls, and the scope of its agenda is so sweeping and so complex in its implementation that it raises several concerns.

Two of my main concerns with the administration's approach have been enforcement and oversight. It has taken the administration several years now just to get to our current state. For example, the administration has proposed to transfer military end-use items, thousands of other sensitive components and parts, and even software code to the Commerce Munitions List under the Commerce Control List. Such a proposal may eliminate congressional notification requirements for the export or retransfer of such defense articles, and that is of grave concern to me because congressional notification must be kept. And this leaves these items eligible for a broad new license exemption to over 36 friendly countries, but it fails to include key safeguard measures such as end-use monitoring programs that could keep these items from falling into the wrong hands.

So what protocols and safeguards are in place to ensure that third-party transfers, front companies, or foreign intelligence entities are not using these country exemptions for defense articles? This broad license exemption also raises the possibility of actually

making it easier for regimes such as China, North Korea, and Iran to obtain U.S. parts and components related to fighter jets, tactical airlift, helicopters, tanks, and satellites that can pose an unintended threat to our national security.

Given this reality, I am concerned about the lack of government oversight over the military items that have been eliminated from both the U.S. Munitions List and the Commerce Control List. As you are aware, Singapore, and Malaysia, and even China, have emerged as transshipment hubs for the export of Commerce-controlled goods to Iran. Now that Commerce will also license munitions, what will the administration do to ensure that these items do not reach those irresponsible governments and do not end up in countries like Iran and North Korea?

So thank you, gentlemen, if you could answer in written form the questions I have posed, but any comments you care to make now would be fine.

Mr. WOLF. Sure. I am happy to, thank you. A whole series of questions, I will try to touch on many of them. In the big picture, one of the primary goals of the effort is to allow us, in fact, to focus more of our resources not so much on the transactions that are of less concern with respect to those for ultimate end use by the governments of the 36 countries that you mentioned but with respect to the diversions and reexports that are of concern. So in the main that is at the core of what we are dealing with.

With respect to the congressional notification question, we have written into our regulation that the major defense equipment that would move, to the extent there is any, to the Commerce Control List would have congressional notification obligations attached to it.

Ms. ROS-LEHTINEN. Thank you.

Mr. WOLF. Sure.

Ms. ROS-LEHTINEN. And I will ask for the rest of the questions to be in written form, and I will give you the questions so you could respond.

Mr. WOLF. Sure.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman.

Chairman ROYCE. We go now to Mr. Eni Faleomavaega from American Samoa.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. And I want to thank members of the panel for their testimony this morning, and deeply appreciate your services to our nation.

I suppose the two fundamental principles underlying the whole question of export control system is one based on national security, and then on the other hand export competitiveness. And it is my understanding we are currently the number one exporter of military equipment in the world.

Could you give me some idea of how much, what is the dollar value of the amount of military equipment that we sell to the world at this point in time? I think $35 billion maybe, or maybe I am overestimating.

Mr. HURSCH. Sir, I don't have the very latest number, but it has been in that neighborhood.

Mr. FALEOMAVAEGA. Can you provide that for the record?

Mr. HURSCH. I will provide that.

Mr. FALEOMAVAEGA. And probably also the top five exporters of military equipment, I would be very curious. I suppose China and Russia——

Mr. HURSCH. I believe it is China, Russia——

Mr. FALEOMAVAEGA [continuing]. And our European allies perhaps.

Mr. HURSCH [continuing]. And Israel, yes.

Mr. FALEOMAVAEGA. Okay. We currently have what, 11 aircraft carriers? And you are talking about—which the bottom line is that understandably competitive as economically, what does this mean in terms of jobs for the American people? When you are looking at, say, we export $35 billion-plus worth of military, what does this mean in terms of jobs to our fellow Americans?

Mr. HURSCH. I don't have the numbers on that with me, but we can certainly get it——

Mr. FALEOMAVAEGA. Can you provide that for the record?

Mr. HURSCH. Yes.

Mr. FALEOMAVAEGA. Did we not just recently sign an agreement selling some $10 billion worth of military equipment to our allies in the Middle East? I believe it was to Israel——

Mr. HURSCH. Yes.

Mr. FALEOMAVAEGA [continuing]. Saudi Arabia and the United Arab Emirates. Do you happen to have a listing in terms of exactly what are some of these toys that we provide for our——

Mr. HURSCH. Well, I believe those will all be notified by the Department of State at the appropriate time, sir.

Mr. FALEOMAVAEGA. And touching on the fact that it is in our national security interests as well as economic competitiveness, do our European allies compete in this effort in selling this military equipment to the Middle East? France maybe?

Chairman ROYCE. Might I suggest, Mr. Kelly, would you hit the button?

Mr. KELLY. Yes, Congressman, the economic stakes indeed are vast. It is very important for U.S. companies all over the United States. Just last year we had our best year in terms of defense sale exports ever. Just in the foreign military sales programs that we administer, last year we had sales of approximately $70 billion, which is by far the most that we have ever achieved. So the trend line is in the right path. Our partners all over the world want U.S. equipment because it is the best military equipment that is available and it hugely empowers us to work with our allies better in the battlefield as well because we are all using the same equipment.

I would just add that these sales create excellent well paying jobs all over the country, and so the stakes are very well. It is a great credit to U.S. companies, I think, that they have performed so well over the last couple of years even as they continue to have to deal with the system that has developed in export controls over the past few years. It is the administration's estimation that once we get through this process, our defense exporters are going to be more competitive than ever.

Mr. FALEOMAVAEGA. More competitive than ever? Okay. I have a different twist in terms of trying to understand the issues. You know when our country was attacked by these 19 terrorists on Sep-

tember 11th, it is my understanding there were 16 Federal agencies all had subdivisions on intelligence and the process of filtering information, and by the time it got to the President a lot of cherry picking went into the process. And you get to wondering how accurate, how well are we monitoring a system so that we can get a sense of accuracy—oh man, I only have 7 seconds left.

Thank you, Mr. Chairman. I would love to follow up with some written questions on this end. Thank you, Mr. Chairman.

Chairman ROYCE. We will go now to Mr. Chris Smith of New Jersey.

Mr. SMITH. Mr. Chairman, thank you for convening this very important hearing. On February 15th, 2006, I chaired a hearing in this room. The first in a series on gross violations of global online freedom especially in China, and on the selling and harmful transfer of weapons of mass surveillance to dictatorships' secret police that systematically employ torture and repressive militaries. Representatives from Google, Microsoft, Yahoo!, and Cisco testified, and it was further revealed at that hearing that Cisco had greatly enhanced the command and control capabilities of the secret police in China, enabling them to hunt down human rights activists, religious believers, and democracy activists as well.

So since 2006, I have introduced the Global Online Freedom Act endorsed by a virtual who's who of human rights organizations from Freedom House to Human Rights Watch, Reporters Without Borders, Amnesty International, access, and 12 other human rights organizations, and by Yahoo!, and others have shown a great deal of interest on the corporate side as well. The Global Online Freedom Act addresses what Eric Schmidt calls the "dark side of the digital revolution." The bill would prohibit the export of hardware or software that can be used for surveillance tracking and blocking to the governments of Internet-restricting countries. Current export control laws do not, as you know, take into account the human rights impact of these exports, and therefore do not create any incentive for U.S. companies to evaluate their role in assisting repressive regimes.

The Global Online Freedom Act will not only help stop the sale of these items to repressive governments, but will create an important foreign policy stance for the United States that will help ensure that dissidents abroad know that we are on their side, tangibly and for real, and that the U.S. businesses are not either wittingly or unwittingly profiting from this repression. This export control law is long overdue and thoroughly consistent with the approach Congress has taken, for example, in restricting certain exports for crime control equipment to the People's Republic of China. It seems to me to make no sense for us to allow U.S. companies to sell technologies of repression to dictators, or enable it, then turn around and have to spend millions of dollars to develop and deploy circumvention tools and other technologies to help protect dissidents.

So my question is—I hope you have seen the bill; it has been around; we have pushed it for a long time; we have had many hearings on it—are you in any position to offer a view as to whether or not you could support the Global Online Freedom Act? And your thoughts on these weapons of mass surveillance. Again, they

are modern tools used to hunt down dissidents and to jail them and to torture them.

Mr. KELLY. Congressman Smith, first of all, thank you very much for your support for export control reform. I am not at liberty to express an opinion on the bill. What I will say is that our arms transfer policy continues to be governed by our Conventional Arms Transfer Policy which has been in effect for many years, more than a decade, and it requires us to consider a number of different factors as we decide whether to approve the export of conventional arms and defense related exports. And those considerations include a host of foreign policy considerations that include human rights, intellectual property rights and considerations like that.

Mr. SMITH. I would ask you if you—Mr. Wolf?

Mr. WOLF. Yes, we haven't as an administration, I believe, taken a position, but from the export control angle it is a significant issue that we are spending a significant amount of time internally researching and thinking through without creating unintended consequences. So I don't have an answer for you yet, but I can guarantee that a significant amount of time is being spent internally trying to think through the very issues that you set out from an export control perspective.

Mr. SMITH. I certainly do appreciate that. If you could, H.R. 491, take a look at it, and if you can convey at least a view back to the committee for inclusion in our record, I would appreciate it.

Mr. WOLF. Understood.

Mr. SMITH. And I thank you for that. And I yield back the balance. And Mr. Chairman, I do hope that our committee could take a good long look at this legislation as well and mark it up. I have been pushing it for 7 years. We got it out of subcommittee one year. There has been some opposition to it, but I think we were more than willing to work with the corporations to try to find a way that is very corporate friendly but also human rights friendly. There is a way of threading that needle, and I think this legislation in its most current form does precisely that.

Chairman ROYCE. And we will take a look at that, Mr. Smith.

Mr. SMITH. I appreciate that.

Chairman ROYCE. And we go now to Mr. Gerry Connolly of Virginia.

Mr. CONNOLLY. Thank you, Mr. Chairman, and welcome to the panel. I begin with a different premise than some of my friends. I actually believe we need to blow apart the current system. It doesn't work. I believe that the bottom line for us ought to be efficacy. If you can control sensitive information, great. But the facts are that ubiquity of knowledge and technology today make that a very problematic proposition, and we are wasting time and we are damaging U.S. industry when we attempt to control something we can't.

And the commercial satellite industry is a classic case study, where for a normal cause to deny a particular country sensitive technology we handed over the industry to foreign competition. They got it anyhow, and we allowed an indigenous industry to grow up with a competitor, damaging jobs here and our industry here, and the goal was, in fact, foiled. Would that be a fair characterization in your opinion, Mr. Wolf?

Mr. WOLF. No, I don't think so. I think because the rules do still have a very fundamental impact——

Mr. CONNOLLY. No, wait. I am sorry. My question is, is that a fair characterization about the commercial satellite industry?

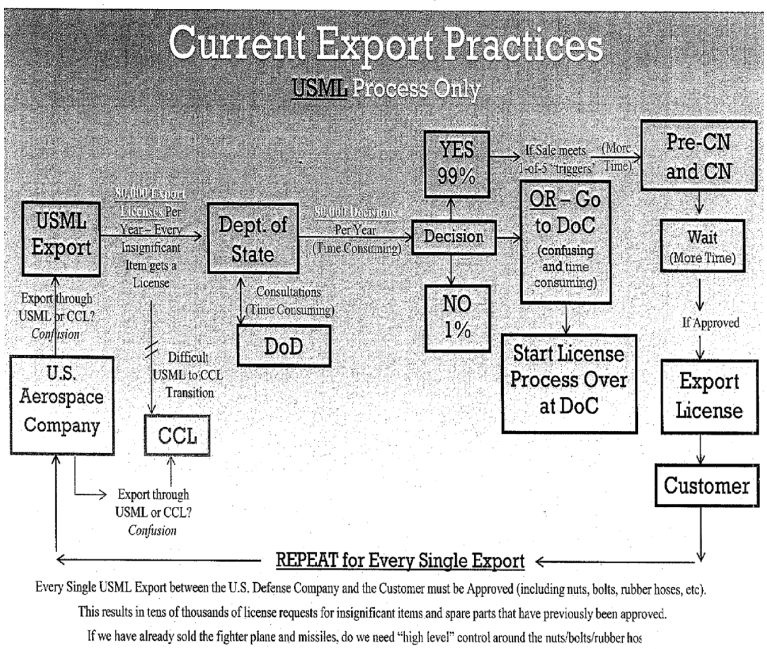
Mr. WOLF. Oh. Well, as described in the report that both the Departments of Defense and State provided last year, yes. The controls that were imposed in the late 1990s had a significant negative impact on the U.S. satellite industry.

Mr. CONNOLLY. Thank you. My staff has just handed out to you three so you can see it, because I know it is going to be hard, this is a flow chart of what you have to go through on the U.S. Munitions List process for export practices. Is this an accurate depiction of the flow chart?

[The information referred to follows:]

THE HONORABLE GERALD E. CONNOLLY OF VIRGINIA
INSERT FOR THE RECORD

24 May, 2013



Mr. KELLY. I think it is accurate to say that the status quo is very complex, and that is why we are working so hard to try to reflect that.

Mr. CONNOLLY. Well, I am kind of stuck in the status quo before we get to what are we doing to try to improve it. So the current system is spread across seven primary departments, is that accurate? Somebody, yes?

Mr. WOLF. Yes.

Mr. CONNOLLY. Yes. There are three primary export licensing agencies. Is that correct?

Mr. WOLF. Yes.

Mr. CONNOLLY. And there are two different lists.

Mr. WOLF. At least.

Mr. CONNOLLY. At least. And somebody has to make a qualitative decision, which list do I want to go under.

Mr. WOLF. Correct.

Mr. CONNOLLY. Both at your end and at the, say, the industry, the corporate end. Is that correct?

Mr. WOLF. Correct.

Mr. CONNOLLY. Have any of you—I did, so in truth of advertising—any of you taken a test to see if you understand compliance requirements on export controls?

Mr. WOLF. Sir, I have practiced in this area for 20 years, so yes, many tests, and on a regular——

Mr. CONNOLLY. You have taken a test?

Mr. WOLF. On a regular and daily basis, yes.

Mr. CONNOLLY. Okay, so you have been doing it for 20 years.

Mr. WOLF. Yes.

Mr. CONNOLLY. But if you are sort of doing a lot of other things in a corporate world this is not necessarily your expertise, but nonetheless you have to pass a test to make sure you can show you understand the rules of engagement. Would you concede they are fairly complex and sometimes subjective?

Mr. WOLF. Yes, they are complex, and we are trying to move away from that. And yes, they are subjective, and we are trying to move away from that as well with a straightforward list.

Mr. CONNOLLY. Well, tell me—and I applaud that. I think you have really made some progress. But I guess what I want to hear is simplicity, clarity and, frankly, focus.

Mr. WOLF. Right.

Mr. CONNOLLY. So it is not some Cold War where we are going to control everything because we can when we know we can't. So what are we focusing on in the efforts you are making, which I do applaud, I think they are making progress, but what are you focused on? What is the ultimate achievement here in terms of what is doable? And are we going to continue to control things like rubber hoses and nuts and bolts that we know we can't control, and I am not sure why we waste our time doing it?

Mr. WOLF. Well, at the core of the effort is the goal to spend dramatically less time and attention with respect to the less significant items to countries of less concern, primarily the group of 36 NATO and other plus allies, so that we can focus our resources more on the transfers of more sensitive items for transfers to other countries.

With respect to the complexity point, inevitably there will be some degree of complexity with any compliance regime when you

have to control everything always, everywhere all the time versus controlling nothing anywhere any time.

And when you try to lay out different degrees of control and sensitivity with respect to different items of different concern to different groups of countries, inevitably complexity results. But what we are trying to do with this effort is to try to make those rules more objective and standardized and common across those multiple regimes that you just referred to.

Mr. CONNOLLY. A laudable goal, and I urge you on in your efforts. But I plead with you, the bottom line should be efficacy. One might feel good about a whole bunch of rules and regulations to control X, but if you know that X is free-flowing and you can't control it, give it up. Thank you so much. Thank you, Mr. Chairman.

Chairman ROYCE. Thank you. We go now to Mr. Rohrabacher of California.

Mr. ROHRABACHER. Thank you very much, Mr. Chairman, and thank you for your leadership you personally have shown on this and so many other vital issues. Let us not miss the bottom line in all this, or I should say the central issue and what has brought us together. It is that business companies, international corporations or even major American corporations cannot be trusted to make economic decisions for their company and take into consideration the national security of our country. That can't be expected.

The American people look at the business community and see the people going into their country clubs and their churches, et cetera, and expect that maybe these people love their country so much that they wouldn't do something to make money that would hurt us and put us in jeopardy. That is just not the case, and we have seen it time and again. Businessmen are overwhelmed with the idea that their corporation has to have a 20 percent profit instead of a 10-percent profit, and if it means putting us in jeopardy, America a little more in jeopardy, they will do it in a heartbeat.

One example of this could be the National Foreign Trade Council which has long lobbied us against sanctions that we have placed on Iran and China and among other adversaries to our country, that in its ratings last year the National Foreign Trade Council gave those of us who voted for sanctions on Iran, no less, on Iran, we got a negative mark from them for voting for sanctions on Iran. Now I am sure my friend Mr. Connolly does not think that was a bad vote. I am sure you were very supportive of our efforts against Iran, but we need to take into consideration that our business community does things like this.

Another example perhaps is one that we have just heard discussed, was the satellites. I originally was supportive and got talked into the idea that our satellite manufacturers should have more freedom to deal with the Chinese. And I was assured by the administration, the Clinton administration, that there would be so many protections that no transfer of technology would happen that I went ahead and supported it. Well, within a short period of time we found out that all these safeguards amounted to nothing. As soon as we permitted it, the businesses moved forward as fast as they could, and what was the result? The result was long-range Chinese missiles were made much more reliable, and then after our help were MIRV and could carry more than one payload. So they

would hit more than one city if they decided to attack the United States.

Well, we can't let that happen again. And let us note that the reason why it has taken so long for you to be here and us discussing this today is because for over a decade the business community has refused to put countries that may be harmful to the United States and accept that they should be looked at differently than those countries like the democratic countries they deal with—Belgium, Brazil, whatever country. I am happy to see today that we, indeed, as we shift the satellite issue from the State Department Munitions List over to the Commerce Department that these new rules in the Commerce—and you will please correct me, Mr. Wolf, if I am wrong—that there are yes, there will be fewer rules on our satellite industry, except for cases like China and Iran and other countries that are deemed potential adversaries of the United States. Is that correct?

Mr. WOLF. That is correct.

Mr.ROHRABACHER. All right. And let us not minimize what you just said. It took us 10 years to get to that point, because fair trade and free trade with all the rest of these countries was being held hostage by our business community so that they could deal with China and make a huge profit in dealing, short term profit in dealing with China. The last thing this country needs is to help China build an aerospace industry to compete with our aerospace industry. And so we need to make sure that our technology that is going over there isn't going to come back and hurt us not only with military planes but also put our people out of work as Mr. Sherman outlined.

Thank you very much for holding this hearing. And I appreciate your testimony today. And this is a very serious issue and I can see that you guys have done your homework. Thank you.

Mr. HURSCH. Mr. Congressman, if I could just respond. One of the few items that is truly seared upon my memory from my experience in this position was sitting here 2 years ago and listening to you talk about China and the satellites. And as you mentioned, we took very careful efforts in the 1248 report that was finally issued and in the legislation to take account of those. I think you will find, when you look at the regulations for what we have just finished notification to Congress on that, we have also taken very careful work on China and other prohibited countries. And I think you will see that we have done a lot to do risk mitigation in that area.

Mr.ROHRABACHER. Yes, sir. Thank you very much. As I say, you did your homework.

Chairman ROYCE. Mr. Cicilline of Rhode Island?

Mr. CICILLINE. Thank you, Mr. Chairman, and thank you to members of the panel. I am interested in receiving from you in written form because I want to focus on another area. But first I want to acknowledge and applaud the administration's interagency effort to reform our export control system, which began with the President's Export Control Reform Initiative, with the goal of making it more efficient for all the parties and to eliminate duplication within the system. I think the implications for America's competi-

tiveness and securing our national security interests around the world are obvious.

I am very interested, some estimates say that tens of thousands maybe even hundreds of thousands of items will be transferred to the Commerce Control List. And so I am interested to know how will the Department of Commerce decide if an item is eligible for a license exemption into one or more of the 36 friendly countries? Two, how we will ensure that the items that are going to this list are going to the correct government and not being diverted for some improper use, and what is the system for review of that and examination of it? And three, are there, as there are under the Arms Export Control Act, sufficient sanctions for a violation of that by improperly diverting materials or items by, for example, terminating future sales? So I would like some detail on the kind of standard that is used, what the review process is to be sure that the end use is as described, and what is the sanction if there is a violation.

But I would like to use my time today to really focus on another area and that is, really, advocacy. In my district in Rhode Island as many of our defense companies are looking to expand their business, really, to respond to declines in defense domestic spending, international sales are becoming even more important and really critical not only to the companies but to the job growth in my state. These are sales which are essential to maintain the positions they have, to grow jobs, and to maintain a steady flow of work throughout the supply chain especially for small- and medium-sized businesses.

And I would really like to encourage the administration to increase its efforts when appropriate to advocate for these defense sales internationally, and I am particularly interested, Mr. Wolf, in understanding what you understand to be the timeline. My understanding is the Department of Commerce has the responsibility for approving advocacy for defense sales. What is the current time period under which that occurs? What is the average time for approving request for advocacy of defense sales? And also do you anticipate as a result of sequestration whether or not that will have some impact on this? Because very often this time is critical to a company.

And then, Mr. Kelly, I would like to ask you, from where you sit are there recommendations that you can make for improving the process to advocate specifically for defense sales? This is important to my district, important to Rhode Island's economy, and while I want the review to be done properly, I am anxious to know how we might accelerate that process in the appropriate circumstances.

Mr. WOLF. Sure. With respect to the defense trade advocacy, that is another part of the Commerce Department and I will have to get back to you with respect to what the actual timelines are on that topic. With respect to the second question, I think it was directed at Mr. Kelly?

Mr. CICILLINE. Yes.

Mr. WOLF. Okay.

Mr. KELLY. Thank you, Congressman. I am very happy to respond to that issue. I think all of us at the State Department, indeed, all through government understand the critical importance of

advocacy on behalf of our defense producers and exporters. And I will say as somebody who has been involved in this field for many decades, now back in Washington at the Political-Military Bureau, that it is an issue that has the attention of every top level official who is working on foreign policy throughout the government, including the top officials at the State Department who are certainly engaged in talking to our partners, especially from the countries that are our biggest customers, in advocating on behalf of our companies and doing everything we can to make sure that these sales go through, again taking into consideration all the other factors that we are required to consider in the Conventional Arms Transfer Policy.

At the same time, many of us not just in the State Department but across government try to participate in defense sales shows all over the world. I recently traveled to the UAE where I participated in the biggest defense sales conference in that region, and had bilaterals with a dozen countries where I pressed for them to buy American. And that is something that we are doing every day on basically every continent in the world and we take it very, very seriously, and we are constantly thinking of how we can do better.

But some of the issues that are critically important to our competitiveness relate to structural issues like the export control regime, and that is why we have spent thousands of man-hours and lots of consultations with this committee and with others in trying to enhance our system so that our defense industry is going to become even more competitive than they are already. Thank you.

Mr. CICILLINE. I thank you, Mr. Chairman. I yield back.

Chairman ROYCE. We go to Mr. Chabot, Steve Chabot from Ohio.

Mr. CHABOT. Thank you, Mr. Chairman. In November 2010, the U.S. committed to support India's full membership in the four multilateral export control regimes—the Nuclear Suppliers Group, the Missile Technology Control Regime, the Australia Group for chemical and biological controls, and the Wassenaar Arrangement, which was for dual-use and conventional arms control in a phased manner. For its part, the Government of India committed to taking steps toward the full adoption of the regimes' export control requirements. What progress has been made by India and the United States in advancing this important matter?

Mr. KELLY. Okay, thank you for your question, Congressman. We are working very closely with India on a number of different issues including on these four regimes. They are working intensively on their adherence to all these regimes. We are working and collaborating with them. We think it is very important that India be brought on and participate in these. We think that it is going to enhance the international strength of all these regimes, and it is a high priority for us.

I would just add that we are engaged with India in intensive conversations on a whole range of defense issues. I just traveled to India recently. It is my second trip in the past year with a Department of Defense delegation in which we engaged with our Indian friends in talking about how we can bring our defense relationship to another level. Thank you.

Mr. CHABOT. Thank you very much. The new Secretary of State was before this committee about a week ago, and received a lot of

questions. There were so many things going on. I raised an issue, but he really didn't have the time to answer it to any degree, so I would like to raise it again. It has been more than a decade since President Bush back in 2001 announced that Washington was willing to sell Taiwan eight diesel electric submarines at a cost of about $12 billion. The official position of Taiwan's Ministry of National Defense is that it remains committed to procuring those submarines from the U.S. Of course, the U.S. stopped making diesel submarines quite some time ago, so the sale has been stalled and we work with some of our European partners on this issue as well, and that hasn't come to anything yet.

Could you advise what the current status of those submarines are and whether the administration is planning to get this moving again? I am the chair of the Asia and the Pacific Subcommittee. I am going to be in Asia next week, in Taiwan, Korea, and Japan. So I am sure that the Taiwanese are going to raise this issue and I would like to have an answer for them.

Mr. KELLY. Yes, sir. If I may, I would like to take that back and we will give you an update. I will say that as is consistent with the Taiwan Relations Act we are in constant communication with Taiwan about their defense requirements, and that dialogue continues and is vigorous.

Mr. CHABOT. Thank you very much. Finally, if you could get us some additional information before Saturday it would be particularly helpful because that is when we are leaving. If it is a little later than that, you can get it to my office and they can get it back to me.

I will tell you what, instead of asking a third question which is going to take some time, Mr. Chairman, I will yield back at this time.

Chairman ROYCE. I thank you, Mr. Chabot. We will go now to Mr. Deutch of Florida.

Mr. DEUTCH. Thank you, Mr. Chairman. I wanted to follow up on a question I think the chairman asked originally and Congressman Sherman asked as well. The fact sheet that we had received says that these reforms will make it harder for countries like Iran to acquire arms, but it doesn't really explain why. And what I am trying to understand is, if we know that the Iranians, for example, and other countries are actively seeking to acquire U.S. arms, defense items, technology, manufacturing equipment, et cetera, and we have a reform proposal that transfers defense items from the Munitions List to the Commerce Control List, what impact does that transfer have and why does it make it harder and not easier for them, ultimately, to acquire those sorts of arms?

Mr. WOLF. Thank you, very good question. There are two primary ways. One, the Commerce Department is adding its enforcement and investigative resources into the mix with respect to such items, so we are taking the status quo of all of the law enforcement and intelligence resources and adding more to it, and that is one way. And the second way goes to the fundamental nature of the reform effort in that we would be spending less of our time with respect to trade for ultimate end use by governments of NATO-plus countries, and taking more of those resources that we spend today in monitoring and licensing and approving and reviewing those

items and diverting them toward enforcement and follow-up on the transactions of concern that you just mentioned.

Mr. DEUTCH. Okay. Let me ask you, you said it was generally off point then to talk about the way things work today, not in the enforcement area—well, let us talk about export control agents for a second. Mr. Wolf, that is your area as well. For those of us who don't think about these issues every day, tell me what an export control agent does.

Mr. WOLF. It is all the same things another law enforcement officer does in terms of investigating, following up on leads, reviewing intelligence, and then participating in the prosecution of those that have violated U.S. export control.

Mr. DEUTCH. And where are our export control agents outside of this country?

Mr. WOLF. There are seven outside the United States.

Mr. DEUTCH. And where are they?

Mr. WOLF. Just a moment. I have that list.

Mr. DEUTCH. And as you look, I ask because at a hearing we had 2 years ago I asked the question and was told then that we had—well, I will let you tell me the numbers. But I was particularly concerned about the numbers that we had in the UAE and then China. Very sensitive areas, very few export control agents.

Mr. WOLF. Well, in addition to the resources that we would have working through our Embassies——

Mr. DEUTCH. Yes, but how many do we have though?

Mr. WOLF. We have one in the United Arab Emirates, Singapore, Hong Kong, India, Russia, and two in China.

Mr. DEUTCH. Two in China, one in each of those other places?

Mr. WOLF. Correct.

Mr. DEUTCH. And then getting back to my original question, here is my concern. We have two export control agents in all of China.

Mr. WOLF. Yes.

Mr. DEUTCH. And we have one in the UAE. And we are making this pretty significant change under this reform proposal which you have, if I understood correctly, assured us is going to not make it easier for countries like Iran to acquire U.S. arms because we will have more resources to commit to enforcement?

Mr. WOLF. We are adding those resources plus all of the other resources of the Commerce Department on top of that which exists today such as ICE, FBI, Homeland Security, which are spread out in a 140 other countries. So it is not only those seven people that are responsible for maintaining the enforcement and the investigations of——

Mr. DEUTCH. Can you just tell me then, how does the export—oh, we are not going to have enough time to do this in detail, but just generally, the export control agent, the role that that person plays is what at the outset, and when would any of those other agencies come into play?

Mr. WOLF. Those agents are dedicated full time to nothing but export controls. They will facilitate coordination with ICE, FBI, Homeland Security and other resources around the world in order to be able to monitor, follow up, do post shipment verifications, do Blue Lantern checks, do a variety of audits of where items are going after they have been shipped. The advantage of these people

being added to the mix is that they are focused 100 percent of the time on the export control topic.

Mr. DEUTCH. Who are we adding?

Mr. WOLF. We are adding the Commerce Department's export enforcement authorities on top of those that already exist with respect to the current system.

Mr. DEUTCH. And so my goal like yours, one of the goals here, I think, or certainly part of the overall goal we are trying to achieve is to ensure that we do everything we can to prevent U.S. arms from flowing into the hands of those, into those countries where they don't belong and we don't want them. Shouldn't part of this discussion include increasing the number of export control agents? Won't that make this easier? Instead of saying they are going to be able to continue to work with all of these other agencies, they are the only ones doing this full time and as we make this major change, shouldn't part of that also require an increase of those export control agents?

Mr. WOLF. Indeed. And, in fact, in the President's Fiscal Year 2014 budget we have asked for an increase in the number of agents for many of the same reasons that you just——

Mr. DEUTCH. How many?

Mr. WOLF. Three.

Mr. DEUTCH. Okay, and where are you asking that they be placed?

Mr. WOLF. Turkey, Europe, and another one in the United Arab Emirates.

Mr. DEUTCH. Okay, we will talk after. And if you could just think about how, particularly in China, if this reform were to be enacted, how those two export control agents will have enough time to do what they do every day already and coordinate all of their activities with all of these other agencies, perhaps we can follow up in my office on that. And I appreciate it. I yield back. Thanks, Mr. Chairman.

Chairman ROYCE. Thank you. We go to Mr. Randy Weber of Texas.

Mr. WEBER. Thank you, Mr. Chairman. Gosh, I have got a lot of questions for you guys. I don't know who to aim them at. Oh, that might be a bad term when we are talking about weaponry, aim. How many licensed exporters are there would you guess? Mr. Wolf, maybe?

Mr. WOLF. Well, in terms of numbers of licenses, I can give you, there were over 80,000 licenses processed by the State Department last year, and approximately 25,000 individual licenses from the Commerce Department. In terms of how many individual companies, there were——

Mr. KELLY. 13,000.

Mr. WEBER. 13,000? What is the process if a licensee develops a new super weapon, what is the process whereby we get notified that this weapon we want to maintain control over and we don't want it exported, how do we get that notification?

Mr. HURSCH. Well, when the exporter—it depends a little bit where the weapon you are talking about is coming from. If it is something that the industry has developed on their own, then they look at the list, determine where on the list it falls and tell us that

they are going to export. If it something that they have developed in coordination with the Department of Defense, then we are likely aware of it in other ways.

Mr. WEBER. Okay, so you are already going to know. Is it a problem for patent rights and proprietary information that they have to come to you and tell you that they are thinking about developing this, especially if it is not with the Department of Defense?

Mr. HURSCH. We are very, very careful when we deal with individual companies, and I believe that is true across the government, to make sure that we protect their proprietary information when it is identified to us as such.

Mr. WEBER. Okay. Are there ways of tracking? In other words, if a licensee, an exporter sends an export to a country that is prohibited, how do you track that?

Mr. WOLF. Well, one, if it is prohibited such as with respect to 600 Series items destined to China, a license wouldn't have been granted in the first place. So by definition it would have been illegal. And then we use all the standard investigative tools in terms of intelligence, resources, tips from other countries, tips from companies, follow-on checks, post shipment checks, post shipment verifications. There is a wide range of methods in order to be able to identify whether an item is being transshipped from one country to another in violation of U.S. export controls.

Mr. WEBER. What is the most recent example you would give us?

Mr. WOLF. There was a very large action taken with respect to a company operating out of Texas, which is a pending matter that the Justice Department has described in a press release and a series of indictments, of transferring items that required authorization to ship from the United States through a variety of different sources around the world into Russia, all activities which required a license that didn't exist. And we can provide you more information about it, but it was a rather substantial interagency exercise to monitor and track and follow up on illegal transfers.

Mr. WEBER. What is the penalty for that?

Mr. WOLF. There are both administrative penalties in terms of debarment, the inability to do business, the inability to ship from the United States, in addition to criminal penalties, up to 10 years in jail and significant dollar penalties as well. The dollar and criminal penalties, by the way, have been harmonized between the State Department and the Commerce Department.

Mr. WEBER. Of course, you could argue the damage was already done because they already have that technology.

Mr. WOLF. Understood. But the point of the threat of prosecution is to be able to compel compliance and to stop that once it is discovered and once it does begin to occur.

Mr. WEBER. Okay. When that happens, and forgive me, these are probably questions that you guys know and I don't have a clue on. When somebody sells technology abroad whether it is to Russia or China, whoever, do they service that equipment? Do they do follow-up service on it?

Mr. WOLF. Generally it is not uncommon, and with respect to the State Department and the Commerce Department rules, that the regular follow-on transfer of technology or in the State Department's case, services, requires authorization as well.

Mr. WEBER. Okay, so you all get notified of that? You are supposed to get notified of that, let me rephrase it, is that right?

Mr. WOLF. Generally, yes.

Mr. WEBER. Okay. When someone sells equipment or technology in violation of our rules, is there such a thing as a slap on the wrist and you just say don't do it any more, it was very, very low level, and you get notice that you are going to be taken off, you are going to lose your license?

Mr. WOLF. Yes, both the Commerce Department and the State Department have a wide range of particular penalties, anywhere from a warning letter to a requirement for an audit, to dollar penalties, to suspension and debarment, all the way up to incarceration.

Mr. WEBER. Okay, so you have a list of those violations going how far back?

Mr. WOLF. As far as our records indicate. There is a significant list going back, yes.

Mr. WEBER. Okay, thank you.

Chairman ROYCE. Thank you. We want to thank our witnesses for their time this morning. And this is a critical issue in terms of both our economy, growing the economy, and at the same time protecting national security. So we will be following the administration's progress on this, and we look forward to collaborating closely with you as we move forward. I thank the members, and I thank the witnesses again. We stand adjourned.

[Whereupon, at 11:36 a.m., the committee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

FULL COMMITTEE HEARING NOTICE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-6128

Edward R. Royce (R-CA), Chairman

April 24, 2013

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend an OPEN hearing of the Committee on Foreign Affairs, to be held in Room 2172 of the Rayburn House Office Building (and available live on the Committee website at http://www.ForeignAffairs.house.gov):

DATE: Wednesday, April 24, 2013

TIME: 10:00 a.m.

SUBJECT: Export Control Reform: the Agenda Ahead

WITNESSES: Mr. Thomas Kelly
Acting Assistant Secretary
Bureau of Political-Military Affairs
U.S. Department of State

The Honorable Kevin J. Wolf
Assistant Secretary of Commerce for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce

Mr. James A. Hursch
Director
Defense Technology Security Administration
U.S. Department of Defense

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.

COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF FULL COMMITTEE HEARING

Day *Wednesday* Date *4/24/13* Room *2172*

Starting Time *10:10 a.m.* Ending Time *11:36 a.m.*

Recesses *0* (____to ____) (____to ____) (____to ____) (____to ____) (____to ____) (____to ____)

Presiding Member(s)

Chairman Ed Royce

Check all of the following that apply:

Open Session ☑
Executive (closed) Session ☐
Televised ☑

Electronically Recorded (taped) ☑
Stenographic Record ☑

TITLE OF HEARING:

Export Control Reform: the Agenda Ahead

COMMITTEE MEMBERS PRESENT:

See Attached Sheet

NON-COMMITTEE MEMBERS PRESENT:

None

HEARING WITNESSES: Same as meeting notice attached? Yes ☑ **No** ☐
(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: *(List any statements submitted for the record.)*

QFR - Royce, Engel, Smith, Cicilline, Keating
IFR - Royce, Sherman (Letter), Sherman (Table), Connolly (Statement), Connolly (Graphic)

TIME SCHEDULED TO RECONVENE _____
or
TIME ADJOURNED *11:36 a.m.*

Jean Marter, Director of Committee Operations

HOUSE COMMITTEE ON FOREIGN AFFAIRS
"Securing U.S. Interests Abroad: The FY 2014 Foreign Affairs Budget"
April 17, 2013

Present	*Member*
X	Edward R. Royce, CA
X	Christopher H. Smith, NJ
X	Ileana Ros-Lehtinen, FL
X	Dana Rohrabacher, CA
X	Steve Chabot, OH
X	Joe Wilson, SC
X	Michael T. McCaul, TX
X	Ted Poe, TX
X	Matt Salmon, AZ
X	Tom Marino, PA
X	Jeff Duncan, SC
X	Adam Kinzinger, IL
X	Mo Brooks, AL
X	Tom Cotton, AR
X	Paul Cook, CA
	George Holding, NC
X	Randy K. Weber, Sr., TX
X	Scott Perry, PA
X	Steve Stockman, TX
X	Ron DeSantis, FL
X	Trey Radel, FL
X	Doug Collins, GA
X	Mark Meadows, NC
X	Ted S. Yoho, FL
X	Luke Messer, IN

Present	*Member*
X	Eliot L. Engel, NY
	Eni F.H. Faleomavaega, AS
X	Brad Sherman, CA
X	Gregory W. Meeks, NY
X	Albio Sires, NJ
X	Gerald E. Connolly, VA
X	Theodore E. Deutch, FL
X	Brian Higgins, NY
X	Karen Bass, CA
X	William Keating, MA
X	David Cicilline, RI
X	Alan Grayson, FL
X	Juan Vargas, CA
X	Bradley S. Schneider, IL
	Joseph P. Kennedy III, MA
X	Ami Bera, CA
X	Alan S. Lowenthal, CA
X	Grace Meng, NY
X	Lois Frankel, FL
X	Tulsi Gabbard, HI
X	Joaquin Castro, TX

The Honorable Gerald E. Connolly (VA-11)

HCFA Full Committee Hearing: Export Control Reform: the Agenda Ahead
Wednesday 4/24/13
10am

After reviewing the history of the Export Administration Act and its effects on the dual-use export control industry, my assessment is that our defense industry is suffering unintended consequences of regulation. It is against our long-term national security and economic interests to weaken this industry. To think that our export control regime goes so far as to restrict otherwise innocuous items such as nuts, bolts, and widgets because these items were once part of an outdated list is difficult to comprehend. In trying to protect sensitive technologies, we have gone overboard, and have stifled innovation and America's competitive edge in certain industries—most notably the commercial satellite industry.

In the case of commercial satellites, the technology was so restricted that other nations were able to grow their industrial base in this sector. The result is that countries like France now have a significant share of the world satellite market, while U.S. companies have lost market share. To add insult to injury, China still managed to get access to satellite technology while our industry was mired in arcane regulations.

I have repeatedly expressed concern about the unintended harm that our export control system has done to our defense industrial base. The manufacturing sector of the defense industry, for example, has made a cogent point with regard to the Export Administration Act—if we restrict access to technology, companies in other nations can begin to fill American companies' market niche. This leads to two unintended consequences: a weak U.S industry and the unintended spread of technology to potentially hostile nations. In a report released last year by the Aerospace Industries Association (AIA), more than 90 percent of respondents to an AIA survey "indicated a connection between export controls and eroding pace industrial base capabilities."[1] Though we ought to be mindful of national security, we ought not to stifle our defense industry in the process.

I commend the Administration's efforts to review and reform our export control regime into a more streamlined set of regulations. The first phase, which consisted of evaluating the various criteria to control various items and technology, is complete. The second phase, which consists of evaluating the control lists, is under way. In fact, several of these lists have already gone through the comment period. The goal in the current phase is to separate items into three tiers. The final phase will be to present legislation. On a related note, last Congress I cosponsored the former Ranking Member's bill, the Safeguarding United States Satellite Leadership and Security Act of 2011 (H.R. 3288). The bill authorized the President to remove commercial satellites from the U.S. Munitions List to the Commerce Control List. The House has passed amendments to that end during Floor consideration of defense bills.

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[1] "Competition for Space: Satellite Export Policy and U.S. National Security," *Aerospace Industries Association*, January 2012, vi.

The Honorable Gerald E. Connolly (VA-11)

There are concerns that export control reform will result in more sensitive items going to countries whose security interests run counter to the U.S.'s interests. But the goal of reform is to more thoroughly control the sensitive items while recognizing that not every minor, everyday component ought to be controlled. The idea to move 74 percent of items from the U.S. Munitions List (USML) to the Commerce Control list provides the U.S. with greater flexibility for certain items, while items that are "specially designed" for a military application will have the same export restrictions to certain destinations, such as China.

The universality of technology means everyone has access. It is a fool's errand to restrict the most common technologies in the hopes that such an errand will be efficacious. I look forward to hearing from today's witnesses on how we can work together to streamline export control regulations. Thank you, Mr. Chairman.

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MATERIAL SUBMITTED FOR THE RECORD BY THE HONORABLE EDWARD R. ROYCE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRMAN, COMMITTEE ON FOREIGN AFFAIRS

STATEMENT FOR THE RECORD
MARION C. BLAKEY
PRESIDENT AND CEO
AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA
Export Control Reform: The Agenda Ahead
House Committee on Foreign Affairs
April 24, 2013

The Aerospace Industries Association of America appreciates the opportunity to provide a statement at today's hearing on Export Control Reform: The Agenda Ahead. Our industry consistently generates America's largest manufacturing trade surplus ($65.74b), but continuing this track record of success cannot be taken for granted.

Aerospace and defense exports create and sustain high-skill, high-wage manufacturing jobs. These exports also preserve and increase the capacity for cutting-edge innovation and a robust industrial base that enables critical U.S. military capability on the battlefield. With such uncertainty surrounding the U.S. federal budget, exports can be an important part of how we maintain our nation's critical defense and aerospace industrial base. Therefore, before commenting on the Administration's Export Control Reform (ECR) initiative, AIA would also like to emphasize to the members of the House Committee on Foreign Affairs that the continued successful operation of the U.S. Export Import Bank is of paramount importance to the ability of exporters to compete on a level playing field in a commercial market where foreign competitors continue to enjoy support from their countries' export credit agencies.

AIA and its members would like to thank Chairman Royce, Ranking Member Engel, and the members of the House Committee on Foreign Affairs for their leadership over the years in trying to modernize our export control system. This support was most recently evident in the Committee's support for provisions in the 2013 National Defense Authorization Act to normalize the export control treatment of commercial satellites and related parts and components. AIA had calculated a cumulative loss of $20.8 billion in U.S. satellite manufacturing revenue from 1999, the year COMSATS were moved to the U.S. Munitions List, to 2009. According to Dr. Stephen Fuller of George Mason University, the direct job loss totaled 8,710 jobs annually and 19,183 in the indirect and induced jobs losses for a combined job loss of 27,893 jobs lost annually. The legislative provisions that restored discretion to the Administration to determine export control jurisdiction for this technology, like all other technologies, offers a way forward to reverse the damage done to the U.S. space industrial base by overregulation of the exports of essentially commercial parts and components, just as ECR promises to do the same for the broader aerospace and defense industrial base.

Our industry has been a staunch supporter of the Administration's efforts to make the U.S. export control system more predictable, efficient, and transparent. Let me be clear about four things our industry is NOT looking for out of the reform process.

The aerospace and defense industry is NOT seeking reforms that would compromise in any way the oversight of high technology exports. All of us – Congress, the Administration, and Industry - have a vested interest in maintaining the security of American technology. We appreciate Congress's active engagement and efforts to better understand the proposed reforms before offering your support. We are encouraged by the Administration's focus on replacing broad "catch-all" regulatory language with explicit itemization (that currently does not exist) of what technologies should be controlled by the State Department. We also applaud the collaborative interagency approach taken to date in developing new, more stringent Commerce Department export control mechanisms - an AIA recommendation - and identifying technologies that could be appropriately administered for export going forward by the Commerce Department. As we understand it, the end result will be that the same government and intelligence agencies currently administering high-technology exports will continue to weigh in and concur on export licenses with a more effective and efficient risk management process that frees up resources for better oversight and enforcement. This will be especially critical for innovations involving new markets, like space tourism and civil applications for unmanned aerial systems, which need appropriate management if they are not to be stifled by inappropriate export control.

The aerospace and defense industry is NOT seeking reforms that would diminish the aggressive enforcement of the export control system. There are always going to be bad actors as well as mistakes made by good actors in the export arena. These facts should not be mistaken as arguments to maintain the status quo system, which places excessive burdens on all exporters. In any new system, bad actors should continue to be punished and good actors who make mistakes should receive appropriate treatment by enforcement agencies. Our companies are committed to compliance, and clarity on the technologies that are subject to the International Traffic in Arms Regulations (ITAR) will be a big help. Efforts to reform enforcement of U.S. export controls should target illicit activities and not unnecessarily burden U.S. companies that are committed to protecting U.S. national security interests and doing the right thing. Reforms that add new burdensome reporting, registration, and compliance requirements will not result in a more streamlined export control system that focuses on the bad actors and achieves our mutual objectives.

The aerospace and defense industry is NOT seeking changes in restrictions on the export of sensitive technology to countries of concern to the United States. Export control reform will not change "denied" export licenses to "approved" licenses. Industry is instead seeking reforms that would make export transactions approved as consistent with U.S. national security and foreign policy interests faster (by deciding in advance that less sensitive items do not require ITAR-level scrutiny and can be controlled by the Commerce Department for export to our close allies and partners) and cheaper (by lowering the costs of "interpreting" compliance requirements and moving appropriate technologies off the U.S. Munitions List and its $2,250 a year registration fee plus $250 charge per export license requirement).

On that latter point, 68 percent of companies that have to register with the State Department because they make a product that is captured on the USML never export. Many of them make the kinds of parts and components we can all agree should be moved to Commerce control. Those parts and components manufacturers that do export have to incorporate the $250 per export license charge into their pricing. For small and medium sized companies, there would be significant benefits in helping them minimize these regulatory burdens of the existing system.

Our entire industry would benefit by the removal of these time and cost "frictions" between transactions throughout the industrial base. Moreover, a system that is more transparent and predictable will help U.S. companies compete and win business abroad. The United States should not have an export control system that is used against us by our foreign competitors as a tool to help them win business. This does not require a lower standard of review; a "level playing field" for U.S. companies should not be – and need not be – a race to the bottom. Instead, we need a system that implements the original intent of export control reform: to scrutinize those transactions and technologies of greatest concern prior to export.

Finally, the aerospace and defense industry is NOT advocating one single reform to relieve the burden on U.S. exporters. Our industry, particularly small and medium sized parts and components manufacturers, are very supportive of the much needed "scrubbing" of the U.S. Munitions List of low/no risk technologies. But this should be the first of many critical steps for reform, not the last. We need to move beyond rationalizing the lists of controlled technologies, and put in place new management models for licensing exports of technologies that will remain on the USML – in particular, workable frameworks for managing licensing and for sharing controlled technologies more effectively in the context of the U.S. Government's own programs. For example, there are caseload management reforms that the Administration should pursue that do not require legislation, such as full implementation of the UK and Australian Defense Trade Cooperation Treaties, license exemptions for spare parts for our key allies and partners, license exemptions for exports in support of the U.S. government, and program licenses for export transactions necessary for the development, production, and sustainment of critical U.S. military, intelligence, space, cyber, and homeland security projects. These, along with USML reform, are among the types of systematic and comprehensive reforms we envisioned when the Administration's export control reform initiative was first announced. As Congress and the Administration work together to implement these changes in a timely and effective manner, these are other reforms that can be enacted concurrently.

Previous reform efforts have met with varying degrees of success. Experience suggests that critical factors in enabling meaningful reform include sustained oversight by senior Administration officials, as well as effective consultation with Congress and the private sector. We stand ready to work with you and the Administration to ensure that we continue to make meaningful progress towards a predictable, efficient, and transparent export control regime.

THE HONORABLE BRAD SHERMAN OF CALIFORNIA
INSERT FOR THE RECORD

24 May, 2013

Chinese Entities Sanction under INKSNA Since Oct. 2008

Name	Date Sanctions Imposed
BST Technology & Trade Company	2/13/2013
China Precision Machinery Import & Export Corp.	2/13/2013
Dalian Sunny Industries (aka: LIMMT)	2/13/2013
Karl Lee (aka: Li Fang Wei)	2/13/2013
Poly Technologies Inc.	2/13/2013
Karl Lee (aka: Li Fang Wei)	12/20/2011
Dalian Sunny Industries (aka: LIMMT)	12/20/2011
Zibo Chemet Equipment Company	12/20/2011
Dalian Sunny Industries (aka: LIMMT)	5/23/2011
Dalian Zhongbang Chemical Industries Comp.	5/23/2011
Karl Lee (aka: Li Fang Wei)	5/23/2011
Xian Junyun Electronics	5/23/2011
Mr. Karl Lee	7/14/2010
Dalian Sunny Industries (aka: LIMMT)	7/14/2010
Dalian Economic & Trade Organization & Liaoning Industry & Trade Co.	7/14/2010
Shanghai Techinical By-Products International (STBPI)	7/14/2010
Zibo Chemet Equipment Company	7/14/2010
Huazhong CNC	10/23/2008
China Shipbuilding & Offshore International Corp. LTD	10/23/2008
China Xinshidai	10/23/2008

MATERIAL SUBMITTED FOR THE RECORD BY THE HONORABLE BRAD SHERMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

International
Association of
Machinists and
Aerospace Workers

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967-4500

OFFICE OF THE INTERNATIONAL PRESIDENT

March 19, 2013

The Honorable Ed Royce, Chairman
The House Committee on Foreign Affairs
2170 Rayburn House Office Building
Washington, DC 20515

The Honorable Eliot Engel, Ranking Member
U.S. House of Representatives
Committee on Foreign Affairs Democrats
B-360 Rayburn House Office Building
Washington, DC 20515

Re: Export Control Reform

Dear Mr. Chairman and Ranking Member:

We are writing on behalf of several hundred thousand active and retired members of the International Association of Machinists and Aerospace Workers (IAM) regarding our concern over efforts to move thousands of items from the State Department's U.S. Munitions List (USML) to the Commerce Control List (CCL). We are especially concerned that shifting aircraft, aircraft engines, and aerospace related parts and components to the CCL without proper analysis could facilitate in further outsourcing technology and production to other countries, impacting our defense industrial base, threatening U.S. jobs and national security, and hurting domestic suppliers.

As we stated in our letter to the President in January 2010 and to Commerce Under Secretary Hirschhorn in August 2012, we firmly believe that any modification of export control policy must include a comprehensive review of how changes, including transferring items to the CCL, will impact U.S. employment and suppliers in the exceedingly important aerospace and related industries. As you are no doubt aware, the U.S. aerospace industry is responsible for several hundred thousand jobs and is critical to our nation's economy and national security and our defense industrial base.

We continue to warn that, in some cases, the less stringent controls provided under the CCL could lead to further transfers of technology or production from the U.S. to another country. The transfer of technology and production can have long term consequences as other countries utilize that transferred technology and production to develop their own commercial and defense industries at our expense. These transfers have already decimated the shipbuilding, machine tool and electronic industries. They are also having a significant impact on both the commercial and defense aerospace and related industries.

Claims that moving products to the CCL will lead to more exports and job creation should be carefully scrutinized. Many U.S. exports contain foreign parts and components, reflected by global supply chains that have expanded in recent years. The last thing our government should be promoting is the offshoring of defense and commercial industries, especially to the detriment of U.S. employment and our defense industrial base. This is why we have urged the Administration to review each item slated to be transferred to the CCL list to determine if the exporters of these goods can guarantee that they will not be utilizing this shift of U.S. export policy to further erode the domestic content of U.S. exports.

We are aware that proposals to move some items to the CCL have been published in the Federal Register. Unfortunately, we do not have the capability to analyze each of the thousands of items that are being proposed to be moved from the USML to the CCL to determine the potential impact on the defense industrial base. Among other things, a proper review of this nature includes gathering data about where each item is manufactured in the U.S. It also involves reviewing where various parts in the supply chain of the items are manufactured. Given the depth of such a review, the federal government is much better suited to conducting this sort of examination.

While current export controls are in need of reform, we must be mindful that policies that encourage or facilitate further outsourcing of technology and production (especially when they are funded by U.S. taxpayers) can and do have a detrimental impact on our defense industrial base and could impede our nation's economic recovery.

Respectfully,

R. Thomas Buffenbarger

R. Thomas Buffenbarger
International President

RTB:cp

Questions for the Record

Submitted by Chairman Edward R. Royce
To Acting Assistant Secretary of State Thomas Kelly

Question 1:

Each U.S. government agency involved with export licenses maintains its own internal database for collecting and reviewing license applications. The information technology (IT) systems are, for the most part, not compatible with one another. To resolve this issue, the Administration completed a review and decided to move the licensing and reviewing departments and agencies to a single licensing database, USXports, a Department of Defense system. When will this interim step be completed? Does this interim step include interoperability with the Automated Export System?

USXports was successfully brought on line at the Department of State July 8, 2013. Efforts are continuing to bring the Department of Commerce onboard sometime late this year. While existing Automated Export System (AES) interoperability will be maintained, increased interoperability with the AES is a future goal. Interoperability with the AES has been planned to include an interface between USXports information and AES to increase the amount of information available at all steps of the export process.

Question 2:

Each U.S. government agency involved with export licenses maintains its own internal database for collecting and reviewing license applications. The information technology (IT) systems are, for the most part, not compatible with one another. To resolve this issue, the Administration completed a review and decided to move the licensing and reviewing departments and agencies to a single licensing database, USXports, a Department of Defense system. What is the timetable for the establishment of a single portal and/or single licensing form for U.S. companies to file and track export licenses? Is there a cost estimate for developing a single electronic licensing entry point and form?

In addition to the 86,000 licenses being adjudicated each year, resources and energies are being focused on the revision of the U.S. Munitions List (USML) in the International Traffic in Arms Regulations (ITAR) and the implementation of the single case management system, USXports. The Administration will return to the single portal and single licensing form effort, including conducting a cost estimate, after completion of the ITAR USML category rewrites and USXports implementation. A cost estimate has not yet been developed. In addition, USXports will link to the International Trade Data System (ITDS) where stored reference data will be used to validate government licenses and permits, allowing for expedited decisions for the release of cargo for export or to detain shipments.

Question 3:

Each U.S. government agency involved with export licenses maintains its own internal database for collecting and reviewing license applications. The information technology (IT)

systems are, for the most part, not compatible with one another. To resolve this issue, the Administration completed a review and decided to move the licensing and reviewing departments and agencies to a single licensing database, USXports, a Department of Defense system.Beyond cost issues, are there legal or technical impediments toward achieving this goal and, if so, what are they?

The Department is not aware of any legal impediments; any technical impediments will be addressed as they are discovered.

Question 4:

I understand that relatively few finished military products are licensed each year under the International Traffic in Arms Regulations (ITAR); rather, it has primarily been a regime that regulates the international supply and production of components and parts. With these proposed changes to the U.S. Munitions List (USML), will the Department of Commerce now become the largest licensing agency by volume for U.S. military parts and components? From a national security and foreign policy perspective, does that outcome make sense?

The Department of State will continue to control those parts and components determined to be the most sensitive. The number of parts and components licensed by the Department of Commerce, either through licenses or license exceptions, will increase. The less sensitive parts and components that will transition to the jurisdiction of the Department of Commerce will support end-platforms previously reviewed for national security and foreign policy concerns. State and Defense will still review certain authorizations for items transitioning to Commerce. From a national security perspective, this transition will allow the Department of State more time and resources to review export license applications involving more sensitive technology, while maintaining stringent export controls and U.S. Government oversight of parts and components. At the Commerce Department, dedicated Export Enforcement Special Agents and analysts, augmented by unique administrative authorities, will facilitate oversight, compliance, and enforcement of items transitioning to the Export Administration Regulations, thus enhancing U.S. national security and foreign policy interests.

Question 5:

The new "600 series" of munitions on the Commerce list will result, if fully implemented, in some significant military items (including certain tactical airlift and utility helicopters) being eligible for license free export to a group of 36 allied or friendly countries. Does the administration assess that other major arms exporters (such as the UK, France, and Russia), as a consequence of being placed at a competitive disadvantage by U.S. reforms, will similarly relax their controls on the export of defense items? Why or why not?

The Administration does not believe that revising the U.S. Munitions List in the International Traffic in Arms Regulations (ITAR) will result in the relaxation of export controls by the other major arms exporters. License exemption Strategic Trade Authorization (STA) only authorizes the transfer without a license if the end-user or end-use is for the governments of one of the 36

STA countries. All other transfers will require a license. In addition, the revisions are being implemented consistent with the four multi-lateral regimes – Wassenaar Arrangement, Missile Technology Control Regime, Nuclear Suppliers Group, and Australia Group – to which those countries must also adhere.

Question 6:

The reform initiative ultimately proposes the creation of a single licensing agency, which is consistent with the practice of several U.S. allies. Such action has the potential to simplify the U.S. export licensing system, and may also result in fewer licenses and a greater number of exemptions for exported goods. However, it is not clear how certain aspects of the system will be implemented even with respect to interim reforms of the control lists. Currently, professionals in the Department of State's Bureau for Political-Military Affairs (PM) review the proposed licensing of defense items and then seek additional views from the Democracy and Human Rights Bureau and relevant regional bureaus, as necessary. How will these views be taken into account? Will PM continue to staff the licensing of munitions that transition to the Department of Commerce? If not, why not?

The Department of Commerce currently reviews license applications for national security and foreign policy concerns, and will do so for those items removed from the U.S. Munitions List in the International Traffic in Arms Regulations (ITAR) and placed on the Commerce Control List.

The Department of Commerce will staff export license applications to the Bureau for International Security and Nonproliferation (ISN), which will be responsible for staffing those to the necessary bureaus and offices within the Department of State, as is the current practice for dual-use licensing. ISN's office of Conventional Arms Threat Reduction will be responsible for State review of most of these license applications, and appropriate cases will be staffed to the Bureau of Political Military Affairs' Office of Regional Stability and Arms Transfers for expert review of arms-related sales. The International Security and Nonproliferation (ISN) offices responsible for weapons of mass destruction and their systems of delivery will review cases related to their expertise. This represents a continuity of review standards as these same offices within State currently review appropriate ITAR licenses staffed by the Directorate of Defense Trade Controls (DDTC), including for those items expected to transition to Commerce control.

Question 7:

Commerce estimates that the Bureau of Industry and Security (BIS) licensing work load will more than double – from 25,000 licenses per year to approximately 55,000. In response, for FY 2014, BIS is requesting an increase of about $8.0 million and 22 full-time equivalency (FTE) positions over the FY 2014 base request of $38.5 million and 167 FTE for exempt employees. While Commerce is requesting resource increases, the Office of Defense Trade Controls Compliance under the DDTC assesses that the proposed movement of USML articles to Commerce will not alter or reduce State's need for compliance resources. How does State justify not reducing its compliance and enforcement resources commensurate with reductions in its licensing responsibilities, while Commerce

is seeking to increase its compliance and enforcement resources in line with growth in its workload?

The State Department's Office of Defense Trade Controls Compliance will review its resource needs after full implementation of the Export Control Reform initiative. We do not know how the International Traffic in Arms Regulations (ITAR) compliance will be affected. We recognize that there will be fewer licenses and other approvals. At the same time, there may be an increase in disclosures during the implementation phase as individuals and companies may not interpret the regulations and guidance properly or rely on poor guidance from third parties.

To provide context to our ITAR compliance work over the past five years, below are some workload metrics:

	FY2007	**FY2012**
Registrants	5144	13,000 (est.)
Disclosures of Violations	806	1,450
Criminal Case Support	100	249
End-use Monitoring	705	820
Number of Employees (½ FTE, ½ contractor)	35	38

From the above metrics, one can see the significant growth in our ITAR compliance workload. **Registration** growth has been managed in part by increased contractor support. We have long intended that registration become more focused on analysis, rather than primarily process. We cannot currently conduct an assessment of registrants to ensure they have an adequate ITAR compliance program in place and understand and can fulfill their obligations as ITAR-eligible manufacturers, exporters, or brokers. **Disclosures** are managed on a triage basis; particular attention is applied to cases involving more critical ITAR violations. We focus on approximately 40% of our disclosures for further review. **End-use monitoring** uses a risk management approach based on countries, commodities, parties of concern from our Watch List and well-established warning flags. The number of end-use inquiries constitutes about .01% of the 80,000 approved license transactions each year.

In addition, Commerce will refer many license applications for items that have changed licensing jurisdiction as a result of the Export Control Reform initiative to the State Department for review. The Bureau of International Security and Nonproliferation will see its workload increase as a result, and State is looking at ways to manage this shift in its workload.

Question 8:

The Arms Export Control Act requires that end-use monitoring programs be designed to provide reasonable assurance that the recipient is complying with the requirements imposed by the U.S. government with respect to use, transfers, and security of defense articles and defense services. The Government Accountability Office (GAO) found that State's ability to effectively conduct end-use monitoring of defense articles and services was limited, as a result of State's inconsistent use of site visits to end-users, delays in requesting end-use checks, closing end-use cases without a confirmation of receipt from the end-user,

and lack of formal guidance on when to conduct a post-shipment check (GAO-12-89). How is State ensuring that end-users are in compliance with export conditions?

The Department conducts post-shipment end-use verifications on selected licenses to ensure that the end-use and end-user accord with the terms of the authorization. Typically a post-shipment inquiry or check will confirm with the end-user that exported items have been received in full (to ensure that no diversion has taken place) and are being used only by the end-user identified on the license, for the purpose given in the license. If any of the end-uses or end-users have changed, or if the items themselves cannot be accounted for, the check is deemed unfavorable and appropriate measures are taken, including updating our Watch List, revoking licenses, denying pending and future licenses involving the end-user and/or foreign consignees, as well as civil or criminal enforcement actions. In addition, State and Commerce will discuss whether and how to leverage each other's end-use check programs where a foreign person is the recipient of both U.S. Munitions List (USML) and Commerce Control List (CCL) items.

In Fiscal Year 2012, ICE HSI initiated 1809 total export criminal investigations, which include both USML and CCL items. Of the 1809 export investigations initiated, 1365 were based on USML items. It should be noted that in Fiscal Year 2012, the Department of State (DOS) / Directorate of Defense Trade Control (DDTC) made approximately 87 referrals of potential International Traffic in Arms Regulations (ITAR) violations to the U.S. Immigration and Customs Enforcement Homeland Security Investigations (ICE HSI) liaison special agent embedded at DDTC. Included in this number are nine referrals from derogatory Blue Lantern checks, which led to six ICE HSI investigations.

Question 9:

The Arms Export Control Act requires that end-use monitoring programs be designed to provide reasonable assurance that the recipient is complying with the requirements imposed by the U.S. government with respect to use, transfers, and security of defense articles and defense services. The Government Accountability Office (GAO) found that State's ability to effectively conduct end-use monitoring of defense articles and services was limited, as a result of State's inconsistent use of site visits to end-users, delays in requesting end-use checks, closing end-use cases without a confirmation of receipt from the end-user, and lack of formal guidance on when to conduct a post-shipment check (GAO-12-89). What policy changes has State implemented to ensure that in-country embassy officials physically verify the receipt of defense articles and defense services by end-users, and that end-users are in compliance with the terms of their license?

The Department has a variety of tools to encourage International Traffic in Arms Regulations (ITAR) compliance and cooperation with "Blue Lantern" end-use checks. The Department conducts Blue Lantern overseas outreach visits to educate and foster cooperation with foreign defense trade partners. More than 30 such visits have taken place in the last eight years. Also, in the event that an end-user is non-compliant or non-cooperative, the Department has the authority to revoke and deny licenses, effectively shutting off exports to that end-user. Civil compliance action, and in some cases civil and criminal enforcement action, can be taken. In the majority of

end-use checks, we experience good cooperation from both government and foreign commercial parties.

Question 10:

The Arms Export Control Act requires that end-use monitoring programs be designed to provide reasonable assurance that the recipient is complying with the requirements imposed by the U.S. government with respect to use, transfers, and security of defense articles and defense services. The Government Accountability Office (GAO) found that State's ability to effectively conduct end-use monitoring of defense articles and services was limited, as a result of State's inconsistent use of site visits to end-users, delays in requesting end-use checks, closing end-use cases without a confirmation of receipt from the end-user, and lack of formal guidance on when to conduct a post-shipment check (GAO-12-89). Has State developed guidance on when a post-shipment check should be conducted?

The Department has a set of criteria, developed over years of experience, for identifying candidates for post-shipment checks. Principally, our concerns when evaluating a potential end-use check have to do with sensitivity of the commodity, destination, and end-users/end-uses. For example, certain commodities, such as F-5 aircraft spare parts, are carefully scrutinized due to their likelihood of diversion to proscribed end-users such as Iran, which still operates the F-5. Similarly, certain destinations are known to have higher risk of diversion to unauthorized end-users and are more likely to generate post-shipment verifications than other destinations or end-users. Finally, those end-users who are less familiar based on their licensing history (or lack thereof) also are more likely to generate a post-shipment check (or, in some cases, a pre-license check). Other post-shipment checks are more context-specific, based on Office of Defense Trade Controls Compliance (DTCC) concerns about a transaction, or referrals from licensing officers, intelligence reporting or law enforcement.

Question 11:

The Arms Export Control Act requires that end-use monitoring programs be designed to provide reasonable assurance that the recipient is complying with the requirements imposed by the U.S. government with respect to use, transfers, and security of defense articles and defense services. The Government Accountability Office (GAO) found that State's ability to effectively conduct end-use monitoring of defense articles and services was limited, as a result of State's inconsistent use of site visits to end-users, delays in requesting end-use checks, closing end-use cases without a confirmation of receipt from the end-user, and lack of formal guidance on when to conduct a post-shipment check (GAO-12-89). If developing the guidance is still in progress, what is the status of State's actions to date?

See answer above.

Question 12:

The Arms Export Control Act requires that end-use monitoring programs be designed to provide reasonable assurance that the recipient is complying with the requirements

imposed by the U.S. government with respect to use, transfers, and security of defense articles and defense services. The Government Accountability Office (GAO) found that State's ability to effectively conduct end-use monitoring of defense articles and services was limited, as a result of State's inconsistent use of site visits to end-users, delays in requesting end-use checks, closing end-use cases without a confirmation of receipt from the end-user, and lack of formal guidance on when to conduct a post-shipment check (GAO-12-89). How will State demonstrate an "increased focus" on more sensitive commodities, especially in light of the fact that State does not maintain a list of sensitive technologies for end-use monitoring purposes?

The on-going rewrite of the United States Munitions List (USML) is identifying those sensitive items that will remain on the USML, enabling State to focus on the smaller universe of items on its list. The Office of Defense Trade Controls Compliance (DTCC) staff, along with Defense Trade Control Licensing (DTCL) licensing officers and guidance from Department of Defense (DOD)/Defense Technology Security Administration (DTSA), carefully review licenses to determine those commodities that may be of high sensitivity due to inherent technology transfer concerns. Though there is no sensitive commodities list per se, DTCC conducts a greater proportion of end-use inquiries on more sensitive commodities, particularly items on the International Traffic in Arms Regulations (ITAR) U.S. Munitions List identified as Significant Military Equipment (SME). Other sensitive technologies, such as portable night vision viewing devices, are subject to a higher proportion of checks – far more than the average for other defense articles.

Question 13:

The Government Accountability Office (GAO) found that State and DOD's end-use monitoring programs for night vision devices (NVD) transferred to Gulf countries varied significantly (GAO-12-89). Specifically, similar NVD technology transferred through DOD's Foreign Military Sales (FMS) and State's Direct Commercial Sales (DCS) obtained varying degree of end-use monitoring. What steps, if any, have State and DOD taken to harmonize the end-use monitoring of night vision devices (NVD) technology and minimize the possibility of diversion to countries of concern?

To identify potential avenues for harmonization, State and DOD have exchanged information and met on multiple occasions to discuss in detail our end-use monitoring regimes. Information shared included the volume of night vision exports via Direct Commercial Sales (DCS) and Foreign Military Sales (FMS), the criteria for identifying end-use checks, the procedures to carry-out those checks, and the resources available to do so. As a result, State and the Department of Defense (DOD) identified significant differences in our two regimes that would not make 100% harmonization possible. However, State is evaluating the efficacy of potential measures to help to equalize the levels of protection afforded to night vision devices (NVD) regardless of how they were obtained by foreign end-users.

The Office of Defense Trade Controls Compliance (DTCC) has a history of cooperation and collaboration with the Defense Security Cooperation Agency (DSCA)/Golden Sentry (the

Department of Defense's end-use monitoring program) and has already taken some steps to harmonize end-use monitoring, including:

- Use of standard provisos (as agreed with DOD/Defense Technology Security Administration (DTSA)) on license approvals for proper handling and security of NVDs similar to the requirements in FMS letters of agreement (LOA).

- Joint efforts to ensure better accountability in destinations of high-use and high volume of exports. For example, following a finding of unacceptable losses by Israel, State and DOD jointly worked out an agreement with government of Israel GOI to do regular checks/reports of all night vision devices (NVD) sold to the Israeli Defense Force (IDF) and managed out of the Defense Cooperation office in Tel Aviv and participated in a DSCA Compliance Assessment Visit (CAV) to Israel in 2010. In Colombia, we have worked closely with DOD assets in country since 2005 to check on NVDs whether DCS or FMS. DTCC participated in a CAV in September 2011. In Iraq, we did a joint DOS-DOD CAV in 2009 to account for both FMS and DCS NVDs in use by Iraqi forces.

- Initiated DOD participation in the Directorate of Defense Trade Control (DDTC) Blue Lantern Outreach Visits. DOD attended DDTC's Outreach visit to India in February 2013.

- Independent of harmonization efforts, State continues to target its end-use monitoring of NVDs to minimize the possibility of diversion. See responses to the following two questions for more information. It has also increased the number of night vision end-use checks.
  - CY 2012 189
  - CY2011 76
  - CY2010 77
  - CY2009 53

Question 14:

The Government Accountability Office (GAO) found that State and the Department of Defense's (DOD) end-use monitoring programs for night vision devices (NVD) transferred to Gulf countries varied significantly (GAO-12-89). Specifically, similar NVD technology transferred through DOD's Foreign Military Sales (FMS) and State's Direct Commercial Sales (DCS) obtained varying degree of end-use monitoring.How is State ensuring the receipt by end-users of sensitive technology exported through Direct Commercial Sales (DCS)?

Post-shipment verification of night vision devices is typically conducted in one of two ways: physical accounting by an embassy official or documented accounting by serial number and location provided by foreign government end-user.

Question 15:

The Government Accountability Office (GAO) found that State and the Department of Defense's (DOD) end-use monitoring programs for night vision devices (NVD) transferred to Gulf countries varied significantly (GAO-12-89). Specifically, similar NVD technology transferred through DOD's Foreign Military Sales (FMS) and State's Direct Commercial Sales (DCS) obtained varying degree of end-use monitoring. Has State updated its guidance on how and when to conduct end-use monitoring of sensitive technology?

State continues to target its Blue Lantern inquiries based on certain "red flag" risk indicators. For night vision devices, these include: level of sensitivity of night vision devices, end-users with no or limited history of Direct Commercial Sales (DCS) procurement of night vision devices (NVD), large quantities, transit to or through a destination of diversion concern, and/or the involvement of unfamiliar or Watch Listed foreign consignees.

Question 16:

The United States likely faces increasing risks as additional countries of concern and terrorist organizations acquire unmanned aerial vehicle (UAV) technology. However, selected transfers support its foreign interests. As of 2012, the Government Accountability Office (GAO) found that State and the Department of Defense (DOD) had differences in their respective end-use monitoring programs for sensitive technologies exported to foreign countries. GAO recommended the two agencies harmonize their end-use monitoring of UAV technology and the agencies agreed to do so.What steps, if any, have State and the Department of Defense (DOD) taken to harmonize the end-use monitoring of unmanned aerial vehicle (UAV) technology and minimize the possibility of diversion to countries of concern? What impact would the transfer of some UAV technologies to Commerce's jurisdiction for control have on end-use monitoring of such exports?

Most unmanned aerial vehicle (UAV)-related technologies licensed for commercial export by State are for parts, components, and related technologies, not whole systems as is the case with the Department of Defense (DOD). State has undertaken a multi-year review of UAV-related licenses and is performing increasing numbers of post-shipment verifications to ensure proper end-use. The Department of Commerce will be able to provide you with information regarding end-use monitoring for items subject to its licensing jurisdiction.

Question 17:

The International Traffic in Arms Regulations was established by the U.S. Government to control the export of sensitive technology and products. The focus of these controls has been the product and related know-how. Now the electronic documentation manufacturers use to develop these export controlled products is increasingly under threat. These electronic documents are leaking to unauthorized parties through accidents, insider activity, and cyber attack.Would you agree that violations of electronic information are likely exceeding violations of physical goods, and are likely going undetected?

Based on information from disclosures, intelligence reporting and federal law enforcement, the Bureau of Political-Military Affairs believes that unauthorized access to International Traffic in Arms Regulations (ITAR)-controlled technical data is increasing. This is occurring in two primary ways: inadequate company information technology (IT) systems and safeguards and cyber espionage by foreign parties. In our review and management of disclosures and in taking administrative action, we are placing more emphasis on the need for proper safeguards and IT measures that can detect cyber-intrusion. Due in part to our educational outreach, industry is becoming more aware of the risks and the need to implement effective preventive measures.

Question 18:

The International Traffic in Arms Regulations was established by the U.S. Government to control the export of sensitive technology and products. The focus of these controls has been the product and related know-how. Now the electronic documentation manufacturers use to develop these export controlled products is increasingly under threat. These electronic documents are leaking to unauthorized parties through accidents, insider activity, and cyber attack. Likewise, would you agree that the electronic information is often more dangerous than physical goods when the adversaries can then produce or replicate it on their own?

Yes.

Question 19:

The International Traffic in Arms Regulations was established by the U.S. Government to control the export of sensitive technology and products. The focus of these controls has been the product and related know-how. Now the electronic documentation manufacturers use to develop these export controlled products is increasingly under threat. These electronic documents are leaking to unauthorized parties through accidents, insider activity, and cyber attack. Does the International Traffic in Arms Regulations (ITAR) establish standards for encrypting or otherwise protecting technical data for controlled items? Why or why not?

The International Traffic in Arms Regulations (ITAR) does not currently establish specific encryption standards. We encourage industry to tailor their compliance measures, including use of encryption, based on their specific circumstances. We have broad guidelines for industry in crafting compliance programs. One of those is information technology (IT) security.

Question 20:

In the current export control system, several agencies are authorized to conduct investigations into export control violations, primarily the Department of Homeland Security, Department of Commerce, and the Federal Bureau of Investigation. In an effort to simplify and develop a single enforcement structure, the administration established the Export Enforcement Coordination Center (E2C2), consolidating activities by the various enforcement agencies. The E2C2 officially opened on March 7, 2012. The Department of

Homeland Security (DHS), the Department of Justice (DOJ), and State were drafting a Memorandum of Agreement (MOA) containing provisions on information assessment, pre-trial certifications and trial certifications. The purpose of the MOA is to establish guidelines for Directorate of Defense Trade Controls (DDTC) procedures relating to law enforcement investigations. The guidelines will aim to reduce response times and to set parameters for processing requests in support of law enforcement investigations. Has this MOA been finalized and signed?

The Department of State (DOS), Directorate of Defense Trade Controls (DDTC) is working with the Department of Homeland Security (DHS), Immigration and Customs Enforcement, Homeland Security Investigations (HSI) on a Memorandum of Understanding (MOU) to develop and implement standards for review and completion of licensing assessments, including first level, Pre-Trial, and Trial certifications in support of ongoing investigations and trial preparation.

In July 2012, the HSI Counter-Proliferation Investigations Unit received "general" Pre-Trial Certifications for items identified in United States Munitions List (USML) Category I (firearms) and Category III (Ammunition). Having obtained the "general" Pre-Trial Certification for all items in these U.S. Munitions List (USML) categories, it is no longer necessary to obtain a preliminary license determination from DDTC. This will help to greatly reduce the workload of DDTC compliance officers, and receiving the required Certifications needed for enforcement activity regarding these items has been reduced from months, to a matter of days.

DDTC and HSI are working on the terms and conditions under which personnel from HSI will be assigned to the DDTC.

Question 21:

In the current export control system, several agencies are authorized to conduct investigations into export control violations, primarily the Department of Homeland Security, Department of Commerce, and the Federal Bureau of Investigation. In an effort to simplify and develop a single enforcement structure, the administration established the Export Enforcement Coordination Center (E2C2), consolidating activities by the various enforcement agencies. The E2C2 officially opened on March 7, 2012. State and the Department of Homeland Security (DHS) share responsibility for national security and enforcement of laws and regulations governing defense trade. Have these two agencies finalized and signed a Memorandum of Understanding to formalize the detail of DHS Liaisons to State to coordinate issues affecting foreign policy, national security and export enforcement?

The Memorandum of Understanding has been finalized.

Question 22:

In its report, *Export Controls: U.S. Agencies Need to Assess Control List Reform's Impact on Compliance Activities*, the Government Accountability Office (GAO) recommended that "the Secretaries of Commerce and State, in consultation with other relevant agencies,

should assess and report on the potential impact, including the benefits and risks of proposed export control list reforms, on the resource needs of their compliance activities, particularly end-use monitoring." Have Commerce and State implemented these recommendations? If action is still in progress to do so, what is the status of your agency's actions to date?

State and Commerce have provided an assessment to the Government Accountability Office of the potential impact of proposed export control list reforms on the resource needs of compliance activities, particularly end-use monitoring.

Question 23:

I understand that parts and components not enumerated on the U.S. Munitions List (USML), or otherwise called out in a paragraph that controls such "specially designed" parts, will transfer to the control of the Commerce Department. Does this rule then mean that non-enumerated parts and components for military end-items like fast attack nuclear submarines or B-52 bombers will transfer to Commerce? Currently, are there any licensed exports for U.S. nuclear attack submarines or the B-52?

The U.S. Munitions List in the International Traffic in Arms Regulations (ITAR) will retain those parts and components that warrant continued ITAR control. Parts or components not enumerated on the USML or controlled by a catch-all control on the U.S. Munitions List (USML) for parts and components specially designed for a defense article (such as a submarine), then it will be captured by the 600-series on the Commerce Control List. These items will need a license to be exported unless one of the exceptions (described in the rule) is applicable. There are no current licenses for exports for the two end items cited above.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Ed Royce
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #1

BIS Outreach to Small Business. BIS states that its export outreach and education constitute the first line in its contact with U.S. exporters and provides guidance and transparency to new and experienced exporters regarding the Export Administration Regulations (EAR).

Question 1

- Navigating the export control license process is one of the largest barriers for small firms. Specifically, what are you doing to educate small firms on the new rules to ensure they understand their new classification requirements? Are you working with the Small Business Administration?

Answer

- BIS has implemented a robust exporter outreach program to educate organizations of all sizes. During fiscal year 2012, BIS conducted over 250outreach and education activities, of which 87 were devoted to Export Control Reform. To date in fiscal year 2013, BIS has conducted more than 100 outreach activities on the reform effort. For small firms specifically, BIS initiated an "Exporting for Small & Medium Enterprises Forum" at its 2012 Update conference. The forum, which was well attended by small firms and their advocates, presented BIS specialists, Small Business Administration policy staff, international trade specialists, and foreign trade officials. The presenters highlighted the intersection and impact of the requirements of export controls on small firms and their activities in various dimensions of international trade, such as marketing, financing, sales, and distribution. As a result of this forum, BIS received input on the areas in which small firms could use additional assistance to raise their awareness, capability, and resources to understand and comply with export controls. Small firm constituents expressed appreciation for raising the visibility and scope of attention to export control and compliance issues. BIS has also increased focus on identifying small firms through registration for the Update conference by requesting responses to registration questions that will identify small firm constituents to BIS. This will assist BIS in developing program segments intended to address particular concerns.

  In addition to the Update conference, BIS has worked to use other forums for outreach to small firms. For instance, the Small Business and Technology Development Center (SBTDC) of the Association of Small Business Development Centers (ASBDCs), invited BIS to present at the SBTDC Second Annual EXPORT Conference in Baltimore, Maryland in 2012. BIS accepted the invitation to address how export controls relate to and impact finance, resource partners, logistics and compliance, licensing and technology. Although the event was postponed, BIS committed to participate upon notice of a new event date and is working with the SBTDC to establish a partnership to

conduct further education and outreach activities. Also, BIS participated in a Society for International Affairs (SIA) conference in October 2012, which served as an initial effort to educate many small firms (mainly parts and components suppliers and manufacturers) whose transactions typically fell under the jurisdiction of the ITAR. At the conference, BIS presented an overview of the nature and benefits to small firms of the Export Control Reform Initiative.

BIS has complemented this outreach by conducting a weekly teleconference or webinar on specific export control reform topics and a weekly call-in hosted by the Assistant Secretary for Export Administration to respond to questions posed by the exporting community. And BIS has worked with industry associations (e.g., National Defense Industry Association, National Customs Brokers and Freight Forwarders Association of America, National Small Business Association, Association of Importers and Exporters), local District Export Councils, the President's Export Council Subcommittee on Export Administration, and prime contractors with vast supplier networks to further identify and educate small firms about export controls and the reform effort.

During the six-month delay in effecting the initial implementation rule, BIS will continue to help ensure the readiness of exporters to comply with the new licensing requirements. For instance, BIS has developed and posted on its website two web-based decision tools to help organizations understand two important concepts of the initial implementation rule – the order of review for classifying items on the Commerce Control List in light of the addition of the "600 series" and the use of the new definition of "specially designed." These new tools, in addition to the existing online training materials on the BIS website, will greatly assist those less familiar with the Export Administration Regulations. While there will be an initial learning curve, we expect the reform to make export licensing for small- and medium-sized businesses less complicated through the use of more positive lists and more clearly defined terms, and benefit U.S. exporters' ability to compete in global markets.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Ed Royce
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #2

BIS Outreach to Small Business. BIS states that its export outreach and education constitute the first line in its contact with U.S. exporters and provides guidance and transparency to new and experienced exporters regarding the Export Administration Regulations (EAR).

Question 2

- As you may know, the Regulatory Flexibility Act (RFA) requires federal agencies to analyze and quantify proposed rules that would have a significant or disparate impact on a substantial number of small entities.[1] In considering the importance of export control reform to small firms, we find it alarming that BIS failed to prepare an RFA analysis. How is your agency planning to comply with the RFA on all future proposed rules?

Answer

- BIS does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it has acknowledged in each of its proposed rules that they would positively affect a significant, but unknown, number of such firms given the structural changes proposed that would reduce the known negative impacts on small entities of the collateral controls and obligations that result from less significant items being ITAR controlled. An example of the detailed analysis of the economic impact BIS has proposed over the course of the last two years is in 77 FR 37530 published on June 21, 2012. In sum, this and the other rules stated that, while the primary goal of this effort is to enhance national security by improving interoperability with our close military allies, there would be the following types of benefits for exporters, particularly small companies, as a result of the plan to transition militarily less significant items to the CCL: relief from the expense of registration and license fees imposed by State that are not imposed by Commerce; flexibility to apply for a license before having a firm contract or purchase order; availability of certain license exceptions; and availability of *de minimis* provisions that help remove the incentives for foreign manufacturers to design out U.S. parts and components. Based on this analysis, the benefits of each of the Export Control Reform rules published so far were so clear that, pursuant to section 605 of the RFA, the Chief Counsel for Regulation certified that the rules would not have a significant economic impact on a substantial number of small entities. As BIS moves forward with various rules to implement Export Control Reform, BIS will continue to analyze the impact of each rule on small businesses in accordance with the RFA.

[1] 5 U.S.C. §§ 601-12.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Ed Royce
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #3

BIS Outreach to Small Business. BIS states that its export outreach and education constitute the first line in its contact with U.S. exporters and provides guidance and transparency to new and experienced exporters regarding the Export Administration Regulations (EAR).

Question 3

- How is your agency prepared to assist small firms with the new compliance requirements, including responding to product certification requests before the 180 day waiver period?

Answer

- BIS responds daily to all calls from exporters through the call center and direct interaction with licensing officers and exporter counselors. In addition, we have conducted more than 100 outreach activities, as described in the answer to Question 1. This support structure is established for organizations of all sizes to use, but it is especially helpful for small businesses because BIS does not charge for its advice and guidance. In addition to our normal outreach programs, BIS has targeted large exporters to assist in educating their small-medium size customers and suppliers. During the 180-day delay before the effective date, BIS will conduct multiple outreach events specifically targeting these small companies.

  Regarding product certification (or "commodity classification" determinations), BIS personnel are currently able to review and complete classification requests (CCATS) submitted prior to the effective date of the initial implementation rule.

  In preparing for the new licensing processes resulting from Export Control Reform, BIS hired 22 new personnel to address the expected licensing, compliance, outreach and product certification for the expected licensing volume for items moved to Department of Commerce export licensing jurisdiction. These new employees, consisting of individuals with technical, compliance and export policy expertise, have spent more than a year familiarizing and training on existing licensing, compliance, and product certification processes under the EAR. In addition to the outreach described above, they have been involved in the development of the processes in the initial implementation rule and are currently able to pre-position commodity classification requests (CCATS) submitted prior to the effective date of the initial implementation rule.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Ed Royce
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #4

BIS Enforcement Funding. According to BIS's FY 14 budget, the transfer of munitions items to the Commerce Control List and resulting doubling of licenses, while maintaining the same number of enforcement staff, "will significantly degrade the number of intelligence reviews that BIS is able to complete to less than 8% of transaction parties to licenses of interest, creating potential intelligence gaps in license reviews." Although BIS has requested additional resources for enforcement, the appropriations trend in recent years has been toward a flat lined budget.

Question 4

- How significant is this potential "intelligence gap" if significant additional resources are not forthcoming? Is it possible that additional resources could be transferred from another Commerce Department agency (as was done to add additional licensing officers) if the FY 14 budget for BIS remains subject to recent fiscal constraints?

Answer

- BIS is working with our interagency partners to identify resources to support the work of the Information Triage Unit (ITU), which produces intelligence-based bona fides products, to address gaps. The ITU will ensure that all licenses that undergo dispute resolution will be supported with a bona fides product.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Ed Royce
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #5

BIS Budget and Overseas Enforcement. Commerce also stated that its new resources will expand current Export Control Officer (ECO) operations, enhance current intelligence efforts, and expand the BIS's national enforcement and analytical capabilities. Currently, Commerce states that its existing seven ECOs "are only able to provide partial worldwide coverage against diversions or transshipments of critical dual-use items."

Question 5

- What are the current duties and responsibilities of BIS's export control officers and where are they posted?

Answer

- BIS has seven Export Control Officers (ECOs) stationed in six foreign locations – Abu Dhabi, Singapore, Beijing, Hong Kong, New Delhi and Moscow. These ECOs are BIS enforcement agents temporarily assigned to the U.S. & Foreign Commercial Service. They have regional responsibility for end-use monitoring of U.S. exports in twenty-eight countries. The ECOs conduct pre-license checks and post-shipment verifications to confirm that U.S.-origin items will be, or are being, lawfully used. The ECOs also confirm that the items have not been diverted to prohibited end users or end uses within the country or illegally transshipped to another country, such as Iran. In fiscal year 2012, BIS conducted 994 end-use monitoring visits in fifty-three countries based on concerns identified by Commerce and its interagency partners. The focus of these visits is to uncover unauthorized transshipments or re-exports to restricted destinations such as Iran. The end-use monitoring coverage provided by these ECOs is augmented by U.S. Embassy personnel in other overseas locations as well as targeted "Sentinel Program" visits led by domestically-based BIS Special Agents. In addition, as part of the Export Control Reform effort to transfer less sensitive munitions items (e.g., certain parts and components of U.S. Munitions List (USML) end items) to the Commerce Control List (CCL), BIS and State, under its Blue Lantern program, are working together to coordinate end-use checks where USML and CCL items are co-located, so that both organizations can expand the number of overall end-use checks conducted by the U.S. Government.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Ed Royce
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #6

BIS Budget and Overseas Enforcement. Commerce also stated that its new resources will expand current Export Control Officer (ECO) operations, enhance current intelligence efforts, and expand the BIS's national enforcement and analytical capabilities. Currently, Commerce states that its existing seven ECOs "are only able to provide partial worldwide coverage against diversions or transshipments of critical dual-use items."

Question 6

- How did Commerce determine the need to expand ECOs throughout the world and identify the new locations—Frankfurt, Istanbul, and Dubai—proposed for new ECOs?

Answer

- BIS established a methodology evaluating the largest recipients of Commerce Control List exports and BIS license approvals, while factoring in any special trade relationship with Iran. This produced a ranking of countries from which we assessed current ECO coverage to determine where additional ECO coverage is warranted.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Ed Royce
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #7

BIS Budget and Overseas Enforcement. Commerce also stated that its new resources will expand current Export Control Officer (ECO) operations, enhance current intelligence efforts, and expand the BIS's national enforcement and analytical capabilities. Currently, Commerce states that its existing seven ECOs "are only able to provide partial worldwide coverage against diversions or transshipments of critical dual-use items."

Question 7

- If the current ECO staff is inadequate to fully protect against diversion and transshipment, why do you assess the expanded staff would be sufficient to safeguard against diversion of Commerce's new expanded caseload of munitions?

Answer

- BIS augments its ECO efforts by deploying Special Agent-led "Sentinel Teams" from the United States and utilizing Foreign Commercial Service assets abroad to conduct end-use checks worldwide. There are significant advantages to stationing ECOs at strategic posts abroad dedicated to conducting end-use checks as well as interfacing with embassy and foreign counterparts on export control policy, licensing, and enforcement issues. The addition of ECOs will assist these efforts. In other words, the U.S. Government will have the same resources, e.g., those from DHS/Homeland Security Investigations and Justice/FBI, dedicated to investigation and enforcement of the items that will become Commerce controlled. The difference is that BIS's resources will be in addition to these existing U.S. Government resources.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Ed Royce
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #8

Tech Transfer Risks Posed by Certain Foreign Nationals. There is a continuing risk that foreign nationals could gain unauthorized access to controlled dual-use technology. However, Commerce's screening of overseas visa applications for potential unlicensed "deemed" exports has declined from tens of thousands to hundreds since FY 2001. In addition, the U.S. issued about one million specialty occupation visas in high-technology fields to foreign nationals from 13 countries of concern to work in the U.S., while Commerce issued "deemed" export licenses authorizing transfers of technology to just a few thousand foreign nationals from these countries.

Question 8

- What steps has Commerce taken to address reported cases in which foreign nationals working in the U.S. have obtained unauthorized access to controlled dual-use technologies?

Answer

- BIS identifies potential instances of unauthorized access to controlled technologies by evaluating threat data identified by intelligence, open source research, review of export databases, or law enforcement sources. To leverage the resources of other national security organizations monitoring foreign nationals entering the United States and with access to visa application records, BIS has entered into partnerships with interagency counter-technology transfer working groups and the Department of State's Office of Missile, Biological, and Chemical Nonproliferation, Bureau of International Security and Nonproliferation (OMBCN), both of which refer the names of parties of potential interest to BIS either directly, or through interagency fora. Office of Enforcement Analysis also continues to pursue a partnership with the Office of Fraud Detection and National Security of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) to leverage that agency's data relating to foreign nationals in the United States. Information reported to BIS through this approach results in enforcement leads for potential investigative action. Statutory responsibility for overseas visa applicant screening is assigned to the Departments of Homeland Security and State. I refer you to those agencies for details on their programs.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Ed Royce
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #9

Tech Transfer Risks Posed by Certain Foreign Nationals. There is a continuing risk that foreign nationals could gain unauthorized access to controlled dual-use technology. However, Commerce's screening of overseas visa applications for potential unlicensed "deemed" exports has declined from tens of thousands to hundreds since FY 2001. In addition, the U.S. issued about one million specialty occupation visas in high-technology fields to foreign nationals from 13 countries of concern to work in the U.S., while Commerce issued "deemed" export licenses authorizing transfers of technology to just a few thousand foreign nationals from these countries.

Question 9

- To what extent has Commerce screened oversees visa applications for potential unlicensed deemed exports in the last three years? How many applications has Commerce screened each year?

Answer

- BIS does not screen visa applications, but rather uses visa applicant data to develop law enforcement leads for investigative action by its Special Agents. Statutory responsibility for overseas visa applicant screening is assigned to the Departments of Homeland Security and State. I refer you to those agencies for details on their programs. Commerce utilizes the State Department's Consular Consolidated Database (CCD) as a valuable source of information when following up on leads generated from, *inter alia*, intelligence, law enforcement, and interagency sources. Commerce coordinates with the Departments of Defense, State, and Homeland Security to assess information utilized from visa application records, including approximately 100,000 visa applications reviewed by OMBCN and approximately 35,000 applications reviewed by the interagency counter-technology transfer working group. In this way, the efforts of other agencies can be leveraged by the Commerce Department to support its law enforcement activities.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Ed Royce
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #10

Tech Transfer Risks Posed by Certain Foreign Nationals. There is a continuing risk that foreign nationals could gain unauthorized access to controlled dual-use technology. However, Commerce's screening of overseas visa applications for potential unlicensed "deemed" exports has declined from tens of thousands to hundreds since FY 2001. In addition, the U.S. issued about one million specialty occupation visas in high-technology fields to foreign nationals from 13 countries of concern to work in the U.S., while Commerce issued "deemed" export licenses authorizing transfers of technology to just a few thousand foreign nationals from these countries.

Question 10

- Has Commerce taken steps to ensure that foreign nationals obtaining specialty occupation visas to work in high-technology and other sensitive fields also obtain deemed export licenses when appropriate?

Answer

- In addition to the interagency efforts described above, BIS continues to pursue a partnership with USCIS to leverage that agency's data relating to foreign nationals in the United States. As BIS recently informed the Government Accountability Office, although the lack of digitization of the I-129 form is an insurmountable obstacle to large-scale review and only a case-by-case use of petition files based on specific intelligence or enforcement target information is feasible at this time, this case-by-case review does allow BIS to identify those deserving additional scrutiny. Consequently, BIS currently acts as a link between DOD and USCIS for the transmission of requests for information.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Ed Royce
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #11

Tech Transfer Risks Posed by Certain Foreign Nationals. There is a continuing risk that foreign nationals could gain unauthorized access to controlled dual-use technology. However, Commerce's screening of overseas visa applications for potential unlicensed "deemed" exports has declined from tens of thousands to hundreds since FY 2001. In addition, the U.S. issued about one million specialty occupation visas in high-technology fields to foreign nationals from 13 countries of concern to work in the U.S., while Commerce issued "deemed" export licenses authorizing transfers of technology to just a few thousand foreign nationals from these countries.

Question 11

- To what extent does export control reform address the issuance of deemed export licenses and the risk of unauthorized technology being released to foreign nationals in the U.S.?

Answer

- The entire ECR focus is to improve national security. One of the most significant ways this will occur is to allow agencies, licensing officers, and enforcement agents to focus on the highest threats and reduce time spent on less significant transactions.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Ed Royce
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #12

GAO Reports. In its report titled *Export Controls: U.S. Agencies Need to Assess Control List Reform's Impact on Compliance Activities*), GAO recommended that "the Secretaries of Commerce and State, in consultation with other relevant agencies, should assess and report on the potential impact, including the benefits and risks of proposed export control list reforms, on the resource needs of their compliance activities, particularly end-use monitoring."

Question 12

- Have Commerce and State implemented these recommendations? If action is still in progress to do so, what is the status of your agency's actions to date?

Answer

- BIS is finalizing a response to include updated actions to GAO.

- The President's Fiscal Year 2014 budget requests $8.3 million to augment BIS enforcement capabilities. These include additional analysts, Special Agents, and three new Export Control Officers, two of which would be dedicated to conducting end-use checks in Turkey and the UAE, countries proximate to Iran.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Ed Royce
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #13

Standards for the Electronic Control of Sensitive Technology. The Export Administration Regulations were established by the U.S. Government to control the export of sensitive technology and products. The focus of these controls has been the product and related know-how. Now the electronic documentation manufacturers use to develop these export controlled products is increasingly under threat. These electronic documents are leaking to unauthorized parties through accidents, insider activity, and cyberattack.

Question 13

- Would you agree that violations of electronic information are likely exceeding violations of physical goods, and are likely going undetected?

Answer

- Unfortunately, some level of tangible and intangible technology transfers are likely going undetected. BIS is working with our interagency law enforcement and intelligence community partners to identify, mitigate, and redress these threats.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Ed Royce
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #14

Standards for the Electronic Control of Sensitive Technology. The Export Administration Regulations were established by the U.S. Government to control the export of sensitive technology and products. The focus of these controls has been the product and related know-how. Now the electronic documentation manufacturers use to develop these export controlled products is increasingly under threat. These electronic documents are leaking to unauthorized parties through accidents, insider activity, and cyberattack.

Question 14

- Likewise, would you agree that the electronic information is often more dangerous than physical goods when the adversaries can then produce or replicate it on their own?

Answer

- Intangible technology transfers can be more sensitive than tangible transfers depending upon the item, the destination, end user, and end use.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Ed Royce
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #15

Reporting on Export Violations. The EAA does not contain specific requirements for Commerce to notify Congress of export controls violations, although Commerce is required to provide an annual report to Congress that includes statutory violations resulting in administrative and criminal penalties. State is required to notify Congress of certain violations of export laws.

Question 15

- How will differences in congressional notification of export controls violations between State and Commerce be reconciled under the export control reform?

Answer

- Although there is no legal requirement for BIS to notify Congress of export violations, BIS promptly posts all final orders for export violations in its E-FOIA reading room on its website and shares this information for significant cases with Congressional staff.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Ed Royce
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #16

Reporting on Export Violations. The EAA does not contain specific requirements for Commerce to notify Congress of export controls violations, although Commerce is required to provide an annual report to Congress that includes statutory violations resulting in administrative and criminal penalties. State is required to notify Congress of certain violations of export laws.

Question 16

- Will Congress be informed in a timely manner of export controls violations of 600 series defense items transferred to Commerce for control?

Answer

- BIS promptly posts all final orders for export violations in its E-FOIA reading room on its website and will share this information for significant cases with Congressional staff.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Ed Royce
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #17

Chinese Joint Ventures and Technology Transfer. Additional scrutiny, discipline, and an awareness of risks are necessary with respect to joint ventures with the PRC where the potential exists for the transfer of militarily-sensitive U.S. technology. In particular, the growing number of joint ventures that call for technology transfers between the PRC and U.S. firms can be expected to provide the PRC with continued access to dual-use technologies for military and commercial advantage.

Question 17

- As you know, the acquisition of advanced dual-use technology represents yet method by which the PRC obtains advanced technology for military modernization from the United States. Where exports of avionics or other militarily useful aviation-related technology is currently allowed to China, how does BIS seek to protect U.S. national security from unauthorized access or disclosure of such technologies to the PRC?

Answer

- BIS evaluates export applications for and monitors exports to China with the primary aim of ensuring that U.S. items are exported to China solely for civil end uses and civil end users. These evaluations include: utilizing intelligence and other information, and input from the Departments of Defense, Energy, and State to evaluate the bona fides of Chinese end users (via the Information Triage Unit) and the potential impact of the technology transfer on U.S. military and intelligence capabilities, prior to issuing licenses. Export authorizations often include specific limits on the level of technology authorized for transfer.
- In addition, BIS, monitors exports to China in the Automated Export System; conducts end-use checks in China, as well as transshipment hubs such as Hong Kong and Singapore; and focuses enforcement activities on Chinese as well as Iranian transactions. This includes criminal and administrative enforcement actions, such as Entity List designations. For example, in December 2012, as the result of a BIS investigation, the Chinese firm China Nuclear Industry Huaxing Construction Limited pled guilty to conspiracy to violate IEEPA and the EAR related to the illegal export of high-performance coatings through China to a nuclear reactor under construction in Pakistan. This is believed to be the first time a Chinese corporate entity has pled guilty to export control violations in a U.S. court. On December 3, 2012, Huaxing was sentenced to the maximum criminal fine of $2 million, $1 million of which will be stayed pending successful completion of five years of corporate probation. In a related administrative settlement with BIS, Huaxing has agreed to pay another $1 million and be subject to

multiple third-party audits over the next five years to monitor its compliance with U.S. export laws.

- As part of Export Control Reform, BIS is maintaining the strict controls of the International Traffic in Arms Regulations for exports/re-exports to China for munitions items (commodities, software, and technology) transferred to the Commerce Control List.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Ed Royce
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #18

Chinese Joint Ventures and Technology Transfer. Additional scrutiny, discipline, and an awareness of risks are necessary with respect to joint ventures with the PRC where the potential exists for the transfer of militarily-sensitive U.S. technology. In particular, the growing number of joint ventures that call for technology transfers between the PRC and U.S. firms can be expected to provide the PRC with continued access to dual-use technologies for military and commercial advantage.

Question 18

- Would you agree or disagree that a principal purpose of PRC joint ventures for civilian projects with U.S. defense firms is for the exploitation of civilian end-use as a means of ultimately obtaining controlled technology? If so, how does current BIS licensing and enforcement policy address this challenge?

Answer

- The interagency review of all license applications includes a review to determine risk of diversion. Please see answer to the previous question for more on BIS license review and enforcement actions.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Ed Royce
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #19

"Specially Designed" Rule. I understand that parts and components not enumerated on the USML, or otherwise called out in a paragraph that controls such "specially designed" parts, will transfer to the control of the Commerce Department.

Question 19

- Does this rule then mean that non-enumerated parts and components for military end-items like fast attack nuclear submarines or B-52 bombers will transfer to Commerce? Currently, are there any licensed exports for U.S. nuclear attack submarines or the B-52?

  If not, what U.S. national security or foreign policy interest requires that we make specially designed parts and components for these systems, as well as related know-how, available for commercial export abroad?

Answer

- The interagency carefully evaluated weapons systems, components, and related technology to determine which items need to remain under the USML and which could be transferred to the CCL. Items that were determined to provide the United States with a critical military or intelligence advantage will remain on the USML. Specially designed parts and components for military systems, as well as related know-how, that do not provide unique military or intelligence capabilities are being moved the CCL. These items, such as B-52 and F-16 wing panels and wiring harnesses, are still considered military items and will be treated accordingly regardless of their presence on the Commerce Control List. These parts will be eligible for less restrictive controls to NATO and other allied governments.
- I would refer you to the Department of State's Directorate of Defense Trade Control (DDTC) regarding your request for licensing data for items controlled on the USML.

Questions for the Record

Submitted by Ranking Member Elliot L. Engel
To Acting Assistant Secretary of State Thomas Kelly

Question 1:

Mr. Kelly's written testimony stated: "Our system required us to spend as much time on proposed exports to our closest allies as we spend on proposed exports to the rest of the world, and as much time on our "crown jewel" technologies as on the nuts and bolts of those technologies. Do persons, companies or groups in our closest allies sometimes transfer U.S. defense items to other countries without U.S. permission? Do they sometimes misuse such items, try to reverse-engineer arms the United States has transferred to them, and/or not maintain adequate security on their technology?

The preponderance of U.S. defense trade is to a select number of North Atlantic Treaty Organization (NATO) and non-NATO allies. Therefore, there is a greater likelihood that International Traffic in Arms (ITAR) violations could occur in those countries. While a very limited number of violations do harm U.S. national security or foreign policy, we do not see a trend toward intentional or criminal behavior. The Department has various means to communicate with Congress, including public documents, on unauthorized activity. In the area of "reverse-engineering," while the information is limited, it is normally provided in classified reports and briefings.

Question 2:

This statement implies that the Department of State hasn't been paying adequate attention to these so-called "crown jewel" technologies when they are proposed for export. Hasn't the State Department prioritized its licensing officers' time to give more attention to these technologies rather than "nuts and bolts"?

That was not the intended implication. The same licensing requirements exist for a U.S. Munitions List (USML) end-item as for a USML replacement part for that end-item. The review process (e.g., staffing requirements, provisos imposed) will be different.

Question 3:

In the past, the Administration has set up special licensing-expediting procedures and working groups for war-related defense exports to coalition partners during past cooperative military actions. Did the Administration not do this with regard to Iraq and Afghanistan? If it did, why was it apparently unsuccessful in expediting these crucial exports?

The State Department has expedited licensing procedures to support Operation Enduring Freedom (OEF), and previously Operation Iraqi Freedom (OIF), but not for all operations in which the United States is supported by our allies. The license applications for those

operations follow the same licensing procedures as routine license applications. It should be noted that often license applications for OEF/OIF are not clearly identified as supporting allies in theatre with U.S. forces, and thus do not receive expedited treatment.

Question 4:

While they will not be "de-controlled," they will be subject to a lesser standard of control than currently on the U.S. Munitions List (USML), correct? And while State and Defense will be able to review proposed licenses, they will not have a veto over them, but will have to go through the process of interagency appeals, possibly even to the President, correct? How often has that interagency appeals process been used in the last five years?

Items transitioning to the Department of Commerce will be controlled in the 600-series, which has a license requirement for all countries with the exception of Canada. Certain of these items will be eligible for license exceptions for end-use by an allied government but with various limitations and compliance obligations.

The interagency dispute resolution process is a regular part of the Commerce licensing system is outlined in Executive Order 12981 of 1995 which created a dispute resolution that could take a case ultimately to the President for decision. The interagency working level Operating Committee (OC) meets every week, and is able to resolve most differences. The Assistant Secretary of Commerce leads a meeting of the Advisory Committee for Export Policy (ACEP) to work through with senior officials from the Departments of Defense, State, and Energy any issues that could not be resolved by the OC and to discuss export control and licensing policy issues in general. The ACEP generally meets monthly, but does not meet if there are no cases requiring resolution or discussion. On-going disputes and efforts to escalate cases beyond the ACEP process are uncommon. Commerce has confirmed that there are no records indicating or otherwise suggesting that a case has been escalated beyond the ACEP since Executive Order 12981 went into effect in December 1995.

Question 5:

Mr. Kelly, what elements of the Department of State will be in the interagency group reviewing proposed Commerce export licenses for all the defense items that are being moved off State's Munitions List? The Committee has been informed that the current arms licensing professionals in the Directorate of Defense Trade Control will not be included, or at least, not routinely included. Why is that? Shouldn't those with the most expertise on arms sales be the ones reviewing these license applications?

The Department of Commerce will staff export license applications to the Bureau for International Security and Nonproliferation (ISN), which will be responsible for staffing those to the necessary bureaus and offices within the Department of State, as is the current practice for dual-use licensing. ISN's office of Conventional Arms Threat

Reduction will be responsible for State review of most of these license applications, and appropriate cases will be staffed to the Bureau of Political Military Affairs' Office of Regional Stability and Arms Transfers for expert review of arms-related sales. ISN offices responsible for weapons of mass destruction and their systems of delivery will review cases related to their expertise. This represents a continuity of review standards as these same offices within State currently review appropriate International Traffic in Arms Regulations (ITAR) licenses staffed by the Directorate of Defense Trade Control (DDTC), including for those items expected to transition to Commerce control.

DDTC is responsible for the review, staffing, and adjudication of export licenses for items subject to the ITAR, not for those items which have transitioned to the Department of Commerce. DDTC is working closely with ISN to ensure the same standards of review continue with respect to 600-series export licenses.

Question 6:

Will State conduct fewer end-use monitoring checks with the elimination of tens, perhaps hundreds, of thousands of items from the U.S. Munitions List (USML)? If so, how many fewer? Will Commerce conduct more pre- and post-licensing checks on exports with the increased responsibility?

The Department does not expect to conduct fewer "Blue Lantern" end-use monitoring checks. In accordance with Export Control Reform (ECR) implementation, as commodities are shifted to Department of Commerce jurisdiction, the Department will increase its focus on the more sensitive commodities remaining on the U.S. Munitions List (USML) in the International Traffic in Arms Regulations (ITAR). Similarly, the Department of Commerce will reprioritize its end-use checks based on its new responsibilities. In addition, the overall footprint of Commerce and State end-use checks is anticipated to expand as we leverage each other's resources to conduct checks at locations where both USML and Comerce Control List (CCL) items are present. In addition to the fact that that the Bureau of Industry and Security (BIS) anticipates processing approximately 30,000 additional licenses, the level of overall enforcement will also increase because Department of Commerce (DOC) Export Enforcement assets will be added to the existing cadre of Department of Homeland Security (DHS) and Federal Bureau of Investigation (FBI) assets that enforce export control-related violations relating to transferred items. Greater collaboration between the Department of State and the Department of Commerce is also improving our analytic capabilities and allows us to share our human resources working out of embassies overseas, enhancing the effectiveness of our end-use check efforts worldwide. In fact, the USML-to-CCL process results in additional resources being brought to investigate potential violations than are available now.

Question 7:

What is the Administration's estimate of what the percentage is of former U.S. Munitions List (USML) components and parts that will either not be controlled on a

600-series export control classification number (ECCN) because they are released by the specially-designed definition? What percent may be decontrolled altogether?

The only non-satellite-related parts and components now controlled on the U.S. Munitions List (USML) that will not be controlled in a 600 series export control classification number (ECCN) are fasteners, washers, spacers, insulators, grommets, bushings, springs, wires, and solder. All other non-satellite-related parts and components now controlled on the USML will be controlled in a 600 series ECCN. As described in the 1248 report filed with Congress in April 2012, the Administration has proposed moving commercial and less significant satellite-related items now controlled by USML XV to a new ECCN, 9x515 and, in limited cases, to already existing ECCNs for "space qualified" components.

Question 8:

How many voluntary disclosures have there been involving potential International Traffic in Arms Regulations (ITAR) violations and the People's Republic of China (PRC) over the last 10 years? For each, did the case concern:
(1) a U.S. Munitions List (USML) end item;
(2) a USML components or part; or
(3) USML defense services or tech data, and whether for an end item or component and part (including, if not for a fielded system, any in Department of Defense (DOD) development or production)?

Voluntary disclosures often involve complex scenarios with multiple countries and commodities and the specific information requested would be extremely difficult to abstract from our predominantly archived files. Disclosures involving China rarely concern hardware as International Traffic in Arms Regulations (ITAR) and Tiananmen sanctions are well-known to the U.S. and foreign defense industry. A more common scenario is transfer of technical data for production in China of a part or component wherein the technical data was not properly treated as ITAR-controlled.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Eliot L. Engel
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #1

Question 1

- What will be the likely benefits of this reform effort for small- and medium-sized businesses that make military-related items? How will it make it easier for U.S. businesses to export and to increase global market share for their products? Have you any estimate how many new U.S. jobs could be created by these reforms?

Answer

- The purpose of the reform effort is to ensure that our export control system meets our current and anticipated national security needs. With all the changes that we are implementing, this new system will be clearer, more consistent, and timelier, and will thus benefit all U.S. exporters by improving their ability to compete in global markets. That is an anticipated ancillary benefit to the reform effort. In addition, transferring parts, components, and other items from the U.S. Munitions List to the Commerce Control List will reduce the regulatory burden particularly on small- and medium-sized companies by removing the annual registration requirement and the related annual regulation fee and largely removing a foreign company's incentive to design out U.S. content. U.S. companies will be able to utilize the *de minimis* provisions of the Export Administration Regulations. It is our understanding that the Milken Institute has estimated that export control reform will result in up to an additional $60 billion a year in U.S. exports.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Eliot L. Engel
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #2

Question 2

- How are you easing the transition from the old system to the new one for small- and medium-sized businesses? Will this reform make their export licensing more or less complicated? What outreach and assistance will you be providing?

Answer

- Although there will be an initial learning curve, we expect the reform to make export licensing for small- and medium-sized businesses less burdensome. This new system will be clearer, more consistent, and timelier, and thus benefit U.S. exporters by improving their ability to compete in global markets. With respect to small- and medium-sized businesses, the Bureau of Industry and Security has been working with representatives from the Small Business Administration, Small Business and Technology Development Center of the Association of Small Business Development Centers, local District Export Councils, and the Society for International Affairs, as well as large defense contractors and their supply chains, to reach out to small- and medium-sized businesses to ease the transition from the ITAR system to the EAR system. In addition, BIS personnel are participating in many conferences and hosting a weekly webinar so that the exporting community can gain a more in-depth understanding of implementation requirements before the October 15, 2013 effective date for the first two categories of items. Exporters can already submit license applications and classification requests for 600-series items and receive assistance from our 600-series licensing officers and compliance officials.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Eliot L. Engel
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #3

Question 3

- I understand that the tens of thousands – and perhaps hundreds of thousands of defense items being transferred to the Commerce Control List – including some significant items as Blackhawk helicopters, and perhaps in the future high-powered combat firearms - will be eligible to be exported without a license to the government personnel of 36 friendly countries. How will you ensure that all these items are not being diverted?

Answer

- It is not the case that all end-items (vice certain parts and components) are automatically eligible for export under Strategic Trade Authorization (STA). A special "STA eligibility request" is required, for example, to export aircraft classified under Export Control Classification Number (ECCN) 9A610.a. That request will go through a special interagency review and vetting. If the "end item" does not provide any critical military or intelligence advantage to the United States, or is otherwise available in countries that are not regime partners or close allies, the Departments may determine that STA should be available. However, if an overarching foreign policy rationale for restricting STA availability can be articulated, eligibility may be denied. In addition, the Administration has not proposed making firearms eligible for License Exception STA.

  For all other 600 series, specific requirements must be met for companies to remain in compliance within the STA exception criteria. To be eligible for license exception STA, the purchaser, intermediate consignee, and ultimate consignee must have been previously vetted and been issued a license by either BIS or the Directorate of Defense Trade Controls (DDTC). This critical requirement should significantly reduce the possible risk of diversion by ensuring that all parties have established trade records and are not included on any entity or debarment lists. Other reporting requirements and criteria must also be met for parties to the transaction. For example, consignees will have to acknowledge the end-use and consignee restrictions and consent to U.S. Government post-shipment verifications and certifications. The exporter will need to maintain high standards of record keeping in order to meet the STA requirements. Finally, the types of items that would be authorized for ultimate end-use by the governments of the 36 STA countries are the types of items that the U.S. government has routinely licensed to those governments for many years.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Eliot L. Engel
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #4

Question 4

- Under the Arms Export Control Act, if a country misuses a U.S.-origin defense article for purposes the U.S. didn't approve – such as against its own or foreign civilians – that country can be sanctioned by the termination of all future arms sales. What comparable sanctions will exist for the items that are being transferred from the U.S. Munitions List to the Commerce Control List?

Answer

- All items removed from the USML and placed on the CCL will continue to be subject to the same licensing policies for proscribed destinations in Section 126.1 of the ITAR, including the comprehensive arms embargo on China – in accordance with Tiananmen Sanctions (P.L. 101-246). This embargo will be expanded in that BIS is combining the military items that have been on the CCL since the early 1990s together with those that are moving to the 600-series as part of ECR. The Administration also intends to maintain its current military end-use controls on certain low level dual-use items no longer subject to multilateral control. The net result of these changes complements the application of U.S. embargos between the State and Commerce rules and, tightens the embargo for those military items already on the CCL. This approach should result in enhanced U.S. national security. In addition, BIS has the authority to add entities to its Entities List and Denied Persons List, which is generally a broader sanction than those available to the State Department. BIS also can tighten country eligibility rules and remove countries from STA eligibility, should circumstances require such action.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Eliot L. Engel
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #5

Question 5

- Under the Arms Export Control Act, the Departments of State and Defense have to issue a public report on all the arms and related items exported during the previous year, as a rough way for Congress and the public to understand who is getting what. What comparable requirements will exist for reporting the export of the arms and defense items being transferred to the Commerce Control List?

Answer

- BIS also publishes an annual report required by statute on what it authorizes for export in aggregate form and will include the new 600 series in its reports. Although not required by legislation, BIS will maintain reporting for all Major Defense Equipment (MDE), so that Congress will maintain the same insight to the parts and components which move over to the Commerce jurisdiction.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Eliot L. Engel
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #6

Question 6

- China and Iran are incredibly active in seeking to acquire U.S. defense items, technology, and manufacturing equipment. What impact will transferring possibly-hundreds of thousands of defense items from the US Munitions List to the Commerce Control List have on their efforts?

Answer

- All items removed from the USML and placed on the CCL will continue to be subject to the same licensing policies, including re-export prohibitions, for proscribed destinations in Section 126.1 of the ITAR. Those policies include the comprehensive arms embargo on China – in accordance with Tiananmen Sanctions (P.L. 101-246). BIS is combining the military items that have been on the CCL since the early 1990s together with those that we are moving as part of ECR. The Administration also intends to maintain its current military end-use controls on certain low level dual-use items no longer subject to multilateral control. The net result of our changes complements the application of U.S. embargos between the State and Commerce rules and should result in enhanced U.S. national security. We will continue to work through End Use Monitoring and with our law enforcement counterparts to ensure that sensitive technologies remain controlled at the same or higher level as prior to these reforms.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Eliot L. Engel
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #7

Question 7

- What steps has the executive branch taken to develop and improve mechanisms for sharing information relevant to the export licensing process, including intelligence information, among all relevant agencies?

Answer

- BIS has worked with our interagency partners to develop a mechanism to provide intelligence and other relevant information on the bona fides of foreign transaction parties as part of its role as executive agent of the Information Triage Unit (ITU). The ITU, which is supported by the Office of the National Counter-Intelligence Executive on behalf of the Intelligence Community, ensures that all licenses that undergo dispute resolution will be supported with a bona fides product as well as other transactions involving controlled exports upon interagency request.

- One of the key elements in improving and sharing information is in the effort to move licensing agencies to one single IT system. All agencies continue to make progress in moving to US Exports (USX), which is a Department of Defense IT system. Future developments also include compliance with the SAFE Port Act requirements for the International Trade Data System, which will enhance sharing data on exports among the export control agencies.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Eliot L. Engel
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #8

The Export Administration Act does not contain specific requirements for Commerce to notify Congress of export controls violations, although Commerce is required to provide an annual report to Congress that includes statutory violations resulting in administrative and criminal penalties. State is required to notify Congress of certain violations of export laws.

Question 8

- How will differences in congressional notification of export controls violations between State and Commerce be reconciled under the export control reform?

Answer

- Although there is no legal requirement for BIS to notify Congress of export violations, BIS promptly posts all final orders for export violations in its E-FOIA reading room on its website and shares this information for significant cases with Congressional staff.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Eliot L. Engel
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #9

The Export Administration Act does not contain specific requirements for Commerce to notify Congress of export controls violations, although Commerce is required to provide an annual report to Congress that includes statutory violations resulting in administrative and criminal penalties. State is required to notify Congress of certain violations of export laws.

Question 9

- Will Congress be informed in a timely manner of export controls violations of exports of defense items transferred to Commerce for control?

Answer

- BIS promptly posts all final orders for export violations in its E-FOIA reading room on its website and will share this information for significant cases with Congressional staff.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Eliot L. Engel
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #10

Question 10

- How will the Department of Commerce decide if a munitions item that has been transferred from the US Munitions List is eligible for a license exemption to one or more of 36 friendly countries? How will the Administration ensure that the freight-forwarders and the intermediate consignees do not divert these license-free munitions items?

Answer

- The Commerce Department will not make such decisions alone. Rather, the Departments of Defense and State, along with the Commerce Department, have together made determinations regarding which items warrant automatic STA eligibility and which items require an STA eligibility review prior to export. Only if all three departments agree that it is in the national security and foreign policy interests of the United States to authorize STA eligibility will Commerce do so in its regulations. Similar to exports today, Section 740.2 of the Export Administration Regulations outlines specific STA limitations, criteria, and eligibility requirements used in the order of review when analyzing an application for eligibility of License Exception STA or the availability of the license exception. A list of 36-STA eligible countries was tailored for the 600 series and many dual-use items, along with specific requirements that must be met. Foremost, to use License Exception STA, all entities, including the purchaser, intermediate consignee, ultimate consignee, and end user, must have been previously approved on a license issued by BIS or DDTC, and the commodity must be for ultimate government end-use.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Eliot L. Engel
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #11

Question 11

- Commerce has estimated that it will get approximately 43,000 more license applications after the process of transferring munitions items from State to Commerce. What changes in resources has Commerce requested to address this need? How did Commerce assess the resource needs that it is requesting?

Answer

- The Department of Commerce has hired 22 of the planned 24 employees to process the anticipated 30,000 license applications transitioning from State to Commerce, the expected additional commodity jurisdictions staffed from DDTC, and the commodity classification requests received at BIS. These individuals have national security backgrounds with hands-on experience in equipment, technologies, and associated policies regarding the items moving to the Commerce Department. Those 22 professionals constitute a new division in BIS, the Munitions Control Division, established within the Office of Strategic Industries and Economic Security.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Eliot L. Engel
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #12

Question 12

- What is the Administration's estimate of what the percentage of former USML components and parts that will only be subject to counter-terrorist (AT) controls at Commerce (and only require a license when intended for Iran, Syria, North Korea)?

Answer

- The Department of Defense has identified items that are so militarily insignificant that they do not warrant controls beyond the AT controls and the China military-end use controls in section 744.21. These items are identified in the new 600 series ECCN paragraphs with a ".y" designation. A transfer of any of these items to as Iran, Syria, North Korea, Cuba, Sudan or China would require a specific BIS authorization, for which there is a preexisting presumption of denial. Because the items are militarily insignificant, the State Department regulations have not required specific data collection.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Christopher H. Smith
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #1

Question 1

- The U.S. maintains export controls on items that can be used to torture people in repressive countries. These "weapons of mass surveillance" pose just as great a risk to dissidents abroad. How can we eliminate the risk of these technologies getting into the wrong hands?

Answer

- Certain items subject to the EAR that can be used for positive purposes such as communications network security can also be used for purposes that the United States would consider infringements to the right of free speech. EAR license requirements and licensing policy take into account destination, end user, and end use.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Christopher H. Smith
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #2

Question 2

- It is widely reported that Blue Coat and Net App have provided technology to the Syrian government in contravention of U.S. sanctions. I understand there is an investigation ongoing. Can you provide the status of these investigations and also whether you have opened other similar investigations for exports to Syria or other countries?

Answer

- I cannot comment on ongoing investigations, but BIS takes allegations of illegal surveillance technology transfer and all other transfers of items subject to the EAR to Syria very seriously and has responded with aggressive investigations when allegations of illegal transfers have come to our attention.

  Commerce has taken two public actions as part of its investigation into the presence of Blue Coat devices in Syria. On December 15, 2011, Commerce announced that it was adding one individual, Waseem Jawad, and one company, Infotec, in United Arab Emirates to the BIS Entity List. The two parties were added based on evidence that they purchased Blue Coat devices designed to monitor and control Internet traffic and transshipped the devices to Syria. The same devices had been the subject of press reporting related to their potential use by the Syrian government to block pro-democracy websites and identify pro-democracy activists as part of Syria's brutal crackdown against the Syrian people. Related to the same investigation, Commerce announced on April 25, 2013 that Computerlinks FZCO, Dubai, United Arab Emirates, has agreed to pay a $2.8 million civil penalty, the statutory maximum, related to the transfer to Syria of Blue Coat devices designed to monitor and control Internet traffic.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman Christopher H. Smith
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #3

Question 3

- In testimony before the Senate last month, Director of National Intelligence Clapper described the commercial market for government-grade hacking software. This kind of software has been used by several foreign governments known to violate human rights. According to DNI Clapper, this kind of software has also been used by foreign governments to target US systems.

  Is US-origin hacking software currently covered by US export control law? If so, to what extent is the risk of blowback to US cybersecurity considered when approving e[?] from export permits. If the export of this technology is not currently regulated under US law, should it be?

Answer

- In general, hacking software is not a specific identifiable technology. It is rather a group of related technologies, some of which are controlled (e.g., cryptanalysis, penetration testing tools with cryptography, and keyloggers) and many of which are not (e.g., viruses, worms, 0-day exploits).

  To the extent that "hacking" software is publicly available, it is not subject to export control regulations. Non-publicly available hacking software is subject to export control regulations, but would require a license or be subject to the terms and conditions of a license exception only if it has encryption functionality and/or cryptanalytic functionality. Cryptanalytic software requires a license to government end users, but is eligible for a license exception to non-government end users in most countries after classification by BIS and NSA.

  Certain hacking software, such as penetration testing software, can be used to help companies defend networks against hacking, but some of these tools may also be used offensively to "hack into" a network or computer.

  The USG, and our allies, are currently reviewing the technology, and policies, associated with this type of activity.

Questions for the Record
Submitted by the Honorable William Keating
To Acting Assistant Secretary Thomas Kelly

Question 1:

This question is primarily for Secretary Kelly. As you may know, the development of the American optical manufacturing industry actually began in my home state of Massachusetts in the early part of the 19th century and the optics industry continues to play a vital role in the U.S. defense industrial base. Many of these components, such as the fiber optic inverter are highly technical, but simple and robust in design, and are then included as a component in a larger subsystem. This larger subsystem falls under United States Monitions List Category XII on sensors and night vision devices – in which any components are barred from being sold to foreign customers, including the fiber optic inverter.

Now, it is my understanding that the subcategory review of the United States Munitions List is expected to take another 9 to 12 months. I have already heard from concerned inverters suppliers in my state that the pace of this review will cause foreign allied customers to procure the components from subpar Chinese competitors.

Given the impact of this waiting period on hundreds of manufacturing jobs – in my state and across the country – my question is this: is it possible for the Administration to publish two sets of proposed rules for Category XII, one with subsystem components at risk of foreign substitute competition and another with complete system items?

Question 2:

The Administration's plan is to publish all newly revised International Traffic in Arms Regulations (ITAR) United States Munitions List (USML) categories in proposed or final form, including Category XII, by the end of this year, and we are positioned to accomplish this. While we recognize the impact this has on manufacturing jobs across the country, publishing multiple sets of proposed rules for Category XII would likely confuse industry and provide potentially conflicting guidance, which would only delay the national security benefits resulting from its revision. In addition, publishing multiple sets of rules for one category would be a departure from the methodology established and applied to the revision of other ITAR USML categories. Furthermore, we would note that items controlled on the USML are not barred from being sold to foreign customers, but rather are licensed for export on a case-by-case basis. The only exception to this is the presumption of denial for licenses requested to those countries listed in §126.1.

In my home state alone, over 45,000 Massachusetts residents rely on the aerospace, aviation, and satellite industries. As you know, with declining defense budgets, arms sales are even more critical to the defense industry in my state to maintain production lines and keep jobs. I often hear from constituents that process times for approving sales can be

lengthy. This is not limited to review of export licenses, which you have addressed today, but also involves the release and disclosure of technology required to allow a Foreign Military Sale (FMS). While I agree with the need to thoroughly examine the nature and purpose of sales to protect our national security, it is equally important that we not delay delivery of sales to critical partners and allies, especially to support our operations in Afghanistan and elsewhere around the globe. I have become increasingly aware of the importance of such sales for our NATO partners in my position as Ranking Member of the Europe Subcommittee. For each of our witnesses, what more can be done to streamline the Disclosure and Technology Release process? In your opinion, where do the bottlenecks lie?

The Department has undertaken three separate, but complementary, initiatives to streamline disclosure and technology release processes and facilitate cooperation with NATO Allies and partners. The first and broadest initiative is the Export Control Reform (ECR) initiative, which was discussed during the hearing. The second is Technology Security and Foreign Disclosure (TSFD) reform. As part of the TSFD reform effort, the Department established the Technology Security and Foreign Disclosure Office (TSFDO), housed within the Defense Technology Security Administration (DTSA). This office screens, triages, staffs, and tracks high-priority technology security and foreign disclosure decisions to ensure more timely and transparent decisions. The TSFDO develops anticipatory policies intended to pre-vet the release of select systems to select countries in advance of the receipt of a letter of request. Thus, the U.S. Government will be able to provide more timely responses to future requests. The TSFDO has completed its first anticipatory policy and is currently working on two other anticipatory policies. The third initiative is the Defense Exportability Features (DEF), which is led by the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (AT &L), and which promotes early assessment of the potential for export of a defense acquisition system in development stages. This initiative includes an evaluation of TSFD concerns during planning, with a view to incorporating exportability features into the design of a system.

Question for the Record
Submitted by the Honorable David N. Cicilline
To Acting Assistant Secretary of State Thomas Kelly

Question:

From where you sit, do you have any recommendations for improving the process used to advocate specifically for defense sales?

Advocacy by Executive and Congressional officials has been important in helping U.S. industry secure a number of defense sales around the world in the last few years, and efforts are underway to improve and expand those initiatives.

In December 2012, to build upon the work of the National Export Initiative, the President established by Executive Order the Interagency Task Force on Commercial Advocacy to maximize the Federal Government's ability to coordinate U.S. government resources that can be employed on behalf of U.S. exporters when they are competing for international contracts, including in the defense sector. The Departments of State and Defense are charter members. Among the Task Force's functions are prioritizing commercial advocacy cases and coordinating engagement of agency leadership with their foreign counterparts regarding commercial advocacy issues.

To complement this strategic-level activity, the Bureau of Political-Military Affairs continues to work with its interagency partners to address, from the bottom-up, perhaps the most significant challenge in effective defense advocacy: coordinating and sharing information between the sheer number of potential State, Defense, Commerce, Congressional, White House and other officials that may be effective advocates for U.S. defense sales, but who also have other vital duties such as foreign policy, technology transfer policies and licensing that are their primary responsibilities. With our interagency partners' assistance, our goal is to improve and expand distribution within State and Defense, in particular, of materials that explain U.S. official's advocacy roles and provide timely information on specific defense advocacy cases.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman David N. Cicilline
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #1

Question 1

- I understand the Department of Commerce has responsibility for reviewing and approving requests for advocacy of defense sales. What is the average processing time for advocacy requests? Given sequestration, do you anticipate any adverse impact on the Advocacy Center's ability to provide timely approvals for advocacy of these sales?

Answer

- The Department of Commerce's International Trade Administration is responsible for reviewing and approving all commercial advocacy requests and, when appropriate for the specific request, may consult with other agencies with relevant knowledge or expertise. The ITA collaborates with BIS on reviewing defense advocacy requests; however, BIS is responsible for approval. For ITA's review and approval process for commercial advocacy it is difficult to cite an average time because cases vary widely. We strive to provide good service to U.S. companies and to meet their timelines as best we can while also conducting the necessary due diligence. Approval processes for defense cases require coordination among BIS, the Departments of Defense and State, and other agencies and generally takes longer than commercial advocacy. As a whole, the FY 13 Spend Plan will affect ITA's administrative operations and programs, including Presidential priorities. As defense advocacy cases include the coordination of multiple agencies, we anticipate that delays to advocacy will occur.

Hearing Date: April 24, 2013
Committee: HFAC
Member: Congressman David N. Cicilline
Witness: Assistant Secretary (BIS) Kevin Wolf
Question: #2

Question 2

- I applaud the interagency effort to reform the export control system with the goal of making it more efficient. The implications for America's competitiveness and security interests are obvious. Some estimates say that tens of thousands, maybe even hundreds of thousands, of items will be transferred to the Commerce controlled list. How will the Department of Commerce decide if an item is eligible for a license exemption to one or more of the 36 friendly countries? How will we ensure that the items that are going to this list are going to the correct government and not being diverted for some improper use, and what's the system for review of that? Are there, as there are under the Arms Export Control Act, sufficient sanctions for violation of improper diversion?

Answer

- Since August 21, 2001, the Export Administration Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R. 2001 Comp. p. 783 (2002)), which has been extended by successive Presidential Notices, has continued the Export Administration Regulations (EAR) under the International Emergency Economic Powers Act (50 U.S.C. §§1701 - 1706 (2000)) (IEEPA).

  The criminal penalties for violating the Arms Export Control Act (AECA) are the same as for violations of IEEPA: a fine for each violation is not more than $1,000,000, imprisonment for not more than 20 years, or both. As part of export control reform, the Administration successfully partnered with Congress in the Comprehensive Iran Sanctions, Accountability and Divestment Act (CISADA) to raise the AECA criminal penalties to harmonize them with those of IEEPA. Administrative penalties for violations of the AECA can reach $500,000, whereas the administrative penalties for violating IEEPA can reach the greater of $250,000 per violation or twice the value of the transaction that is the basis of the violation. Depending on the value of the transaction, the maximum IEEPA administrative penalty could be higher or lower than the maximum AECA penalty. Criminal violations of either the AECA or IEEPA may result in a denial of export privileges. An administrative violation of the EAR could also result in a denial of export privileges. A denial of export privileges prohibits a person from participating in any transaction subject to the EAR. Furthermore, it is unlawful for third parties to participate in an export transaction subject to the EAR with a denied person.

  The Strategic Trade Authorization (STA) license exception defines eligibility. Certification requirements for all items subject to the EAR are: provide consignee with ECCN, obtain consignee statement, notify consignee that shipment (or specific items within a shipment) is (are) under STA, and keep record showing which shipments belong

to each consignee statement. For 600 series items, additional requirements include the following: the export must be for ultimate end use by the USG or the government of one of the STA-36 countries, non-U.S. parties must have been previously approved on a State or Commerce license, and the consignee statement must include ultimate end user restrictions for 600 series items and agreement to end use checks. Failure to comply with the conditions of STA or any license exception would be a violation subject to the penalties described above.

The Bureau has developed and implemented a comprehensive compliance action program to ensure that current EAR items exported under License Exception STA are not diverted to unauthorized end users and end uses. The same program will apply to 600 series STA exports. The Bureau reviews AES trade data to identify exports conducted under license exception STA. The Bureau then requires each user of STA to maintain support documentation that shows compliance with the STA requirements. The information maintained by the exporters can be reviewed by staff to determine compliance with the conditions of use of STA. In some instances Bureau staff also conducts on-site document reviews of STA users. Potential violations are referred to the Bureau's enforcement arm for investigation.

The Bureau also provides, on both the BIS and the Administration's Export Control Reform web sites, a free interactive decision tool that allows exporters to determine whether they are eligible for STA prior to undertaking an export. If exporters have questions they can then contact the Bureau's export counselors for additional guidance. Commerce licensing staff has also been trained on STA compliance and these activities are included in Export Administration's internal Wikipedia. To date the Bureau has issued over 80 letters requesting compliance documentation.